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United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles.

The British Ship "CELTIC CHIEF," Her Tackle, etc., and
JOHN HENRY, Master and Claimant Thereof,
Appellants,

vs.

INTER-ISLAND STEAM NAVIGATION COMPANY, LIM-
ITED, an Hawaiian Corporation, Owner of the Steamers
"HELENE," "MIKAHALA," "LIKELIKE," and
"MAUNA KEA," for Itself, the Officers and Crews of
Said Steamers and Other Servants of Said Owners,
Appellee.

The British Ship "CELTIC CHIEF," Her Tackle, etc., and
JOHN HENRY, Master and Claimant, Thereof,
Appellants,

vs.

MILLER SALVAGE COMPANY, LIMITED, a Corporation,
Appellee,
and

The British Ship "CELTIC CHIEF," Her Tackle, etc., and
JOHN HENRY, Master and Claimant Thereof,
Appellants,

vs.


MATSON NAVIGATION COMPANY, a California Corpora-
tion, Owner of the Tug "INTREPID," for Itself and the
Officers and Crew of Said Tug,
Appellee.

VOLUME VII.
(Pages 2497 to 2944, Inclusive.)

Filed

Upon Appeals from the United States District Court
for the Territory of Hawaii.

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James

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(Testimony of J. R. Macaulay.)

Q. Wasn't she practically the same width amidships that she was at the fo'c's'le deck?

A. She must have been less at each end.

Q. How much more at the break of the fo'c's'le deck than amidships, would you think?

A. She might have been about eighteen inches or so less.

Q. Now, how far was it from the break of the fo'c's'le deck to the extreme point of her bow, to the rail immediately foward?

A. About thirty feet, approximately.

Q. How far from the break of the poop was the capstan located? A. Cabin?

Q. Capstan? A. From the break of the poop?

Q. No, the break of the fo'c's'le?

A. Ten or fifteen feet.

Q. And was it about midway between the sides of the vessel?

A. Right in the center of the deck, as near as I can remember.

Q. What would you say about the possibility of a man standing there at that capstan at that fo'c's'le deck being able to look over the side of the "Celtic Chief" where the "Arcona's" line passed into the vessel and being able to see the "Arcona's" line?

Mr. WARREN.—I object to that, if your Honor please, [2651—1820] calling for a conclusion of the witness, it not being shown that he is possessed of information sufficient—

The COURT.—I allow the question.

A. The "Arcona's" line? Do you mean outside the ship or inside? What portion of the line do you mean?

(Testimony of J. R. Macaulay.)

Q. The line would be ten or twelve inches over the deck where it passed into the vessel?

A. Outside or in?

Q. Outside. A. Not possible to see.

Q. That's because the sides bulge out more or less, isn't it?

A. If a man was standing on the fo'c's'le close by the capstan, it was not possible for him to see over the port quarter outside the bulwarks above the deck.

Q. And the same is true, is it not, of the starboard side? A. The same is true on the other side.

Q. Now, suppose he stood at the, stood at the rail on the fo'c's'le deck, would he possibly look out far enough on the side in view of the line of the Miller Salvage Co. at the fo'c's'le deck and see those lines?

A. If he looked over the rail and leaned over just as far as he could he would see a great portion of the ship's side.

Q. Would he be able to see as far forward or aft as to the place where the "Arcona's" line on the starboard side of the "Celtic Chief" passed into the "Celtic Chief"?

A. It's very doubtful in my mind whether he would.

Q. You don't think he could?

A. I don't think he could.

Q. He couldn't see forward of it?

A. He could see forward, not aft.

Q. I mean aft. A. He couldn't see aft.

Q. How about the port side?

A. The same. Both sides the same.

Q. That would not be a very good place to watch the various lines from the steamers, the towing steamers.

(Testimony of J. R. Macaulay.)

A. No, it wouldn't be a very good place.

Q. There's too much obstruction in the view, is there not?

A. There is considerable obstruction. [2652—1821]

Friday, September 29, 1911.

Q. Captain, it wouldn't take very much difference in the width of the "Celtic Chief" at her fo'c's'le deck to prevent a person leaning over the rail seeing around the side of the vessel, would it?

A. No, it wouldn't take very much.

Q. As a matter of fact, a distance of a couple of feet at the point where he was looking over the rail would come pretty nearly preventing his seeing more than half the distance or half the side of the vessel?

A. It would prevent his seeing just exactly the two feet.

Q. So if two feet inside of the line of the broadest part of the vessel—so that if it was two feet wider amidships, then he'd have to put his head out a distance more than two feet over the rail to see?

A. Yes, he would be at an angle of two feet from where he was standing.

Q. Did you see those men at work on the capstan up there on that fo'c's'le deck?

A. Occasionally.

Q. Were they constantly heaving away on that capstan?

A. No, they would heave away, you know, and get a strain on their second luff and then put a stopper on the first luff and during those times they didn't heave on the capstan.

Q. Is it possible, Captain, that the "Mikahala"

(Testimony of J. R. Macaulay.)

would have shifted to eastward any material distance on Wednesday night during the last half hour of the time preceding the floating of the "Celtic Chief," in view of the position that her anchor was laid in?

A. Quite possible.

Q. It is quite possible? A. Yes.

Q. How is that possible if she was maintaining a strain both on her line and on her anchor chain?

A. Well, a great distance would be observed but a small distance she may have been able to shift a small distance to the eastward or to the westward without being observed in the dark. [2653—1822]

Q. As much as fifty or a hundred feet?

A. Well, to the—if she moved a hundred feet to the westward, that is, towards the "Arcona"?

Q. No, I'm asking to the eastward.

A. Well, it would not be observed so quickly as if she had moved to the westward.

Q. But I'm asking you, Captain, if the "Mikahala" could very well have moved such a distance to eastward if she had had a strain both on her line and her anchor chain, in view of the position of her anchor, as you testified, directly out ahead of her?

A. If her anchor had a heavy strain right just out ahead in direct line with her keel and she was towing in that direction and pulling on the "Celtic Chief," it would be impossible for her to go very much to the eastward or to the westward. She couldn't go very well.

Q. Well, could she go as much as a hundred feet considering the fact that she had only four hundred feet of line as you have testified?

A. To go a hundred feet she would have to slack

(Testimony of J. R. Macaulay.)

a little on her chain cable or come in some portion; she couldn't do it if she didn't.

Q. She would have to ease up considerable?

A. She would have to come in some portion.

Q. She would have to heave up considerable?

A. Heave up or something else.

Q. Something of that kind. Either she would have to ease up on her anchor chain or on her line, or else bring her anchor in?

A. Either one of the three.

Q. Now, Captain, if, as a matter of fact, her anchor was laid further to eastward than you had thought that it was located, that is to say, located at an angle off of her port bow, that would have permitted her, would it not, to have swung further to eastward fifty or a hundred feet had she wished to do so? A. Surely.

Q. As a matter of fact, Captain, isn't it improbable [2654—1823] with her anchor laid and in use the "Mikahala" would be shifted to eastward *any materially*, in view of the fact that the current and swell were striking her on her port side?

A. The current and swell striking her on the port side would have a tendency to prevent her from moving to the eastward.

Q. It was striking her on the port side?

A. On the port side; yes.

Q. Of the "Mikahala"?

A. Of the "Mikahala."

Q. And that was—if she still continued to use her anchor, isn't it improbable that she would have shifted any material distance to seaward in view of the fact that the swell and the current had a tendency

(Testimony of J. R. Macaulay.)

to throw her in the opposite direction?

A. The swell wouldn't have so much effect on her as the current.

Q. Both of them?

A. In the position she was lying, the swell would strike her with a ledge (?), the current would strike her more abruptly on the port side.

Q. Well, now, then, answer my question. Isn't it quite improbable that she would have shifted any material distance to eastward against the current while she was pulling before the "Celtic Chief" came off, if she still continued to use that anchor which you say she had ahead of her?

A. I didn't observe that she moved any distance at all to the eastward.

Q. I'm asking you if it isn't improbable that she would have shifted to eastward or could have shifted to eastward while pulling if she still continued to maintain a strain on her anchor chain laid directly ahead of her as you have testified? A. Yes.

Q. So that, Captain, if she did shift eastward a considerable distance, fifty or a hundred feet during the last half hour preceding the "Celtic Chief's" coming off, isn't it possible and even probable that her anchor was laid, prior to that time or was lying prior to that time on the port bow instead of [2655—1824] directly ahead and that you may have been mistaken in your opinion that the anchor was directly ahead?

A. I don't quite understand that question, Mr. Olson.

Q. I say, if she did in fact shift to eastward fifty or a hundred feet about a half an hour before the

(Testimony of J. R. Macaulay.)

“Celtic Chief” came off, wouldn’t that indicate that you were mistaken in your opinion that the anchor was laid directly ahead of her? A. No.

Q. And wouldn’t it indicate, on the other hand, that her anchor was lying on her port bow at an angle so that she was able to shift in line with her anchor?

A. No.

Q. Why not?

A. Because she might in the meantime have dragged her anchor home and was compelled under those circumstances to move to the eastward and get another hold on the bottom.

Q. Now, then, assume that her anchor did not drag and the hold of the anchor still be the same?

A. No, it would not.

Q. What would your answer then be?

A. If her anchor held and she was pulling continuously on her anchor chain and hawser she would maintain the same position.

Q. And if she did, as a matter of fact, notwithstanding pulling on her hawser and heaving in on her anchor-chain, or maintaining a strain on that anchor-chain, shift to eastward fifty or a hundred feet, that would indicate, would it not, almost conclusively, that her anchor was lying more to eastward than you had thought? A. No.

Q. Even if her anchor held?

A. If the anchor held and it was laying to the eastward it would, and they pulled upon it it would certainly draw the vessel in the direction of the anchor.

Q. Well, you don’t seem to gather the import of my question. [2655—1825] A. No.

Q. I say, if she shifted to eastward fifty feet or a

(Testimony of J. R. Macaulay.)

hundred feet while maintaining a strain on her hawser and also a strain on her anchor chain, wouldn't that indicate almost conclusively, if the anchor did not drag, that the anchor was lying more to eastward than you thought?

A. Yes, if the ship moved to the eastward it would.

Q. That is what it would indicate almost conclusively? A. Yes, yes.

Q. You said that the "Intrepid" had a splendid position, I believe?

A. I believe the "Intrepid" had the first choice of positions and I consider it the very best position of them all.

Q. Of them all. So that when the "Intrepid" was cut loose and the "Arcona" took the position of the "Intrepid," the same would be true of the position of the "Arcona," that she had the best pulling position of all of the towing agencies; isn't that so?

A. That is exactly so.

Q. That is because, is it not, that these two vessels while they were there, that is, each of them, had a position seaward or astern of the "Celtic Chief," and, therefore, pulling in the direction of the least resistance to the "Celtic Chief"; isn't that so?

A. That's so.

Q. Do you remember about what time of day with reference to noon it was that the "Arcona" got her first line attached to the "Celtic Chief"? I mean her first wire line attached to the "Celtic Chief"?

A. As near as I can remember, it was sometime during the afternoon.

Q. Well, was it early afternoon or late afternoon?

A. Early afternoon.

(Testimony of J. R. Macaulay.)

Q. It was early afternoon, wasn't it, early after the noon hour? A. Somewhere about there.

Q. As a matter of fact, she appeared upon the scene slightly [2657—1826] before noon, did she not? A. I really forget.

Q. Now, you said that it was inadvisable for the "Arcona" to attempt to make any pull at the time that she had got her first wire line fast, did you not, because it was low water?

A. Well, there was other reasons.

Q. Didn't you say it was because it was low water?

A. I did, surely.

Q. Did you state on direct testimony any other reasons except low water?

A. Well, that question may not have been asked me.

Q. I see. Well, now, Captain, as a matter of fact, didn't you know that it was practically high water at the time that the "Arcona" made that pull?

A. Well, it may have been high water, I forget now the state of the tide.

Q. So that when you said that it was inadvisable to make a pull at that time because there was low tide, you didn't remember very well, did you, what the state of the tide was? A. I have an idea.

Q. Well, don't you know that it was about high water when that pull was made by the "Arcona"?

A. I don't remember whether it was high water or not at the present time.

Q. You don't remember at all whether it was high or low tide?

A. I remember that I advised the executive officer of the "Arcona" not to pull heavy upon that line or

(Testimony of J. R. Macaulay.)

if he did he would surely break it and he pulled on that line and broke it and I said, "There you are."

Q. In other words, you had the last word and last opportunity to laugh?

A. I answered your question, that's all.

Q. Now, Captain, if you did say on direct that your opinion was that that was not an advisable time to pull because it was low water—

A. That was part of the reason.

Q. I want to know why you said low water when you say that [2658—1827] you don't remember whether it would be low water or high water, low tide or high tide?

A. I may remember a thing last week that I don't remember to-day.

Q. Your recollection may have failed since you testified on direct?

A. They may have improved or they may have failed. There are things that I know to-day that I didn't know last week and there are things that I knew last week that I don't know to-day.

Q. The breaking of that line is pretty clear in your memory, is it not?

A. Very clear, and the situation preceding it.

Q. Well, now, why is it, then, that you have forgotten since you last testified whether or not it was high tide or low tide?

A. There's numbers of things that a person will forget and there's lots of things that are set in a man's memory more than another. That is one of the things that I recollect very well, the breaking of that wire. It was against my advice to the executive officer of the "Arcona."

(Testimony of J. R. Macaulay.)

Q. You know, do you not, that the best time to tow, the most choice time to tow a vessel is during high tide? A. At that particular occasion.

Q. I'm talking about any vessel that was aground.

A. I thought we were—if you're talking about some other vessel, I don't know anything about it.

Q. You don't know whether it is the most choice time to pull on a vessel, at high tide, a vessel aground.

A. Generally so.

Q. You have stated, have you not, that the Inter-Island vessels were pulling at slow speed during low water? A. I have.

Q. Do you know whether that was done on Wednesday during the day?

A. To the best of my knowledge and belief I believe it was so.

Q. Well, now, Captain, it would be possible, would it not, for [2659—1828] a vessel as powerful as the "Arcona" to maintain a strain upon that wire line which would have given some assistance to the pulling of the Inter-Island steamers if the strain were not so great as to break that line?

A. It certainly would.

Q. Yes. A. It certainly would.

Q. And the only reason why it ~~would not~~ be of any use would be because the strain would be so great that it did break, or would break that line; isn't that so?

A. Well, it seemed to me on that occasion that the "Arcona" wished to just try and see what she would do in pulling the "Celtic Chief" off at that particular time and they overdid it. They pulled so strong on that wire that they broke it.

Q. You said on direct, Captain, that the "Arcona"

(Testimony of J. R. Macaulay.)

must have been somewhere in the neighborhood of ten minutes only pulling, somewhere in the neighborhood of ten minutes, when the line broke. Now, is that still your memory in regard to that?

A. Yes, she pulled for a very short time.

Q. Now, you said on direct ten minutes?

A. Well, it may have been ten minutes.

Q. Might have been a little bit more?

A. Couldn't have been a little more.

Q. It might have been a little more? A. Less.

Q. That is your best judgment? A. Yes.

Q. That is, having maintained a strain as you have stated for about ten minutes, it parted?

A. It parted.

Q. Do you remember the state of the sea at that time, whether it was rough or smooth?

A. Well, it was just the same as it had been during the day previously to the parting of the line, the swell rolling in. The swell didn't have so much effect upon the "Arcona" as it did have on the [2660—1829] smaller vessels.

Q. Because the "Arcona" is a heavier vessel?

A. She's a heavier and much more powerful vessel.

Q. And the kind of a swell that was running on Wednesday wouldn't have very much effect on the "Arcona"?

A. Oh, yes, it would have some effect.

Q. But not nearly as much as on the other vessels?

A. But not so much as upon the other vessels.

Q. Do you remember whether or not the "Arcona," after getting both steel hawsers on board the "Celtic Chief," engaged in any manoeuver for the purpose of getting an equal distance on each line or an equal

(Testimony of J. R. Macaulay.)

strain on each line? A. Yes, I do.

Q. Well, did she do that?

A. The executive officer came on board of the "Arcona" and superintended the running of the second line and we were standing both together on the poop and we passed remarks about this line from the "Celtic Chief," the new line, what a nice wire it was, and I said to the executive officer, "Now," said I, "That is a fine piece of wire and if you had the equal of that on the other side you would have two fine wires. When you get this wire fast, for God's sake, don't start in and pull it in two pieces." And he said that they were going to take a steady pull and get the line straightened out so that they would take an equal strain as near as possible. They did so.

Q. They did what? A. They did so.

Q. About what time of day was it they did that?

A. That was late in the afternoon?

Q. Getting pretty nearly dusk, wasn't it?

A. Well, yes, it was late in the afternoon; I can't remember the time it was.

Q. You watched the operation, did you? [2661—1830]

A. Oh, sure!

Q. Did they get an equal strain on the two lines, as far as you could observe?

A. Well, when they run this new wire they found it was too short to reach the "Arcona"; then they got a boat and bent something on to that from the "Arcona"; then they made that fast and got an equal strain.

Q. In order to get that equal strain they were obliged to put some strain, actually place some strain

(Testimony of J. R. Macaulay.)

upon those wires, were they not?

A. No, if one was tighter than the other they would merely slack the one that was tightest. If one was straight out and the other was slack they would haul in on the one that was slack.

Q. The "Arcona" was using her propellers then?

A. No, not at all.

Q. Were the two lines hanging clear of the water?

A. They were forming a slight arch from the stern of the "Arcona" to the stern of the "Celtic Chief."

Q. Slight arch? A. Yes, a slight curve.

Q. Do you mean they formed a bight in the middle which would touch the water?

A. Oh, yes, it touched the water.

Q. Did it touch it very considerable?

A. Not so very much.

Q. That is in the middle?

A. In the middle, in the center.

Q. And they equalized the two lines so that they touched near the same place?

A. About the same.

Q. And the "Arcona," I suppose, was heading directly ahead, so that, so far as her position was concerned, the lines had an equal strain, so that if she had pulled ahead there would be an equal strain on the lines?

A. As far as I could see the lines were equal proportion.

Q. Did you observe whether or not the "Arcona" changed her position much after that?

A. No, I did not. [2662—1831]

Q. Didn't back up nearer to the "Celtic Chief"?

A. No, no.

(Testimony of J. R. Macaulay.)

Q. The lines, so far as you observed, kept in that position? A. They maintained the same position.

Q. During the rest of the evening?

A. During the rest of the evening.

Q. With a bight in the middle which touched the water together at the exact instant? A. Yes.

Q. And that was the condition, was it, of those lines, during the last half hour preceding the floating of the "Celtic Chief," as far as you could observe?

A. Just the same.

Q. And you could observe them, could you?

A. I could.

Q. How were you able to observe those lines Wednesday night after darkness?

A. At times I could observe them by means of the "Arcona's" search-light; then I could observe them a certain distance from the taffrail of the "Celtic Chief," but I couldn't see the lines directly close up to the "Arcona."

Q. But you could see them from the "Celtic Chief" down to where they touched the water, from the "Celtic Chief"? A. Pretty close.

Q. About half the distance, the point where they would touch the water? A. In the center?

Q. Yes, in the middle of the line?

A. About the middle of the line.

Q. Now, then, if witnesses in this case have testified, Captain, that during the half an hour or so preceding the "Celtic Chief's" coming off, those lines were hanging absolutely slack down in the water, the lines hung down from the stern of the "Arcona" into the water and hung down from the stern of the "Celtic Chief" into the water, would that be

(Testimony of J. R. Macaulay.)

[2663—1832] correct or incorrect?

A. I believe that such a statement would be incorrect.

Q. They weren't hanging anywhere near as slack?

A. Not quite as slack.

Q. Not anywhere near as slack?

A. Not anywhere near as slack.

Q. Because they were hanging as you have already described them, with a bight in the middle, slightly touching the water? A. Yes.

Q. Now, if Mr. Dowsett, one of the directors of the Inter-Island Steam Navigation Company, has testified in the manner that I have stated that those lines were hanging directly down from the stern of the "Arcona," what would you have to say about that, during that last half hour or three-quarters of an hour?

A. They might have appeared so from the direction that he was viewing the wire, but he wouldn't get a correct view of it.

Q. It might have appeared so to him but that would be a delusion, would it not, to him?

A. An ocular delusion, I believe.

Q. In other words, if they so appeared to him he didn't get a correct view of their actual condition, did he?

A. As far as he went he might have taken the lines to hang in that position, but to me it was different. I gave you what I thought was the exact position of the lines as I saw them.

Q. You were standing on the poop of the "Celtic Chief"?

A. I was standing right at the taffrail, only on the

(Testimony of J. R. Macaulay.)

poop of the "Celtic Chief."

Q. And you couldn't be mistaken about the angle of those wires? A. I don't think I was.

Q. You weren't viewing those wires from a distance—you were viewing them between the points where they came aboard the "Celtic Chief," weren't you?

A. I was right on the poop. They didn't come aboard at that point where I was standing.
[2664—1833]

Q. You were right between them?

A. I was between the two points.

Q. Between the two lines?

A. Between the two lines.

Q. You couldn't very well have a better position for taking an observation of them, could you?

A. No, it couldn't be improved upon, I don't believe.

Q. Where was Captain Haglund during the last half hour or so preceding the "Celtic Chief's" coming off?

A. Captain Haglund was walking around all over. He was from one deck to another. One minute he would be inboard of the "Celtic Chief" and the next time he would be aboard the "Mikahala." He was a pretty hard man to keep the run of during that time.

Q. Where was he during the last twenty minutes or thirty minutes preceding the "Celtic Chief's" floating?

A. To the best of my recollection, Captain Haglund was aboard of the "Celtic Chief" previous to her floating.

(Testimony of J. R. Macaulay.)

Q. Just previous to her floating?

A. Just previous, a short time, perhaps.

Q. You saw him?

A. I saw him and conversed with him.

Q. Where was he on the "Celtic Chief"?

A. I was standing aft in my usual position at the taffrail at the poop and Captain Haglund came along and he said, "I brought you some nice sandwiches and a piece of pie" and we sat there and we had some sandwiches.

Q. Where was Captain Henry during the twenty or thirty minutes preceding the floating of the "Celtic Chief"?

A. Captain Henry was down below in the cabin.

Q. Was he there when she started finally to move off? A. No, he was on deck.

Q. Whereabouts? A. On the poop.

Q. How long had he been on the poop immediately prior to the time that she began to come finally off the reef? [2665—1834]

A. Oh, he must have been on the poop, well, I should say about half an hour or so.

Q. He had been there about half an hour before the floating?

A. Yes, before she actually floated.

Q. He came up at the same time you did, didn't he? A. No, he came up after I came.

Q. How long after?

A. It might have been five minutes or so.

Q. He came up very shortly after?

A. Oh, yes, directly afterwards.

Q. Now, if Captain Miller has sworn in this suit that he and you and Captain Henry were down in

(Testimony of J. R. Macaulay.)

the captain's cabin, Captain Henry's cabin, for twenty minutes or so immediately prior to the floating of the "Celtic Chief" and that you all ran out on deck at the last moment when the "Celite Chief" was sliding off of the reef, will you state whether or not that is the truth? A. That is not the truth.

Q. If Captain Miller so testified, he was testifying to something that was not true; is that so?

A. I take it that way.

Q. Don't you know? A. I do not.

Q. You know that it was not so?

A. It was not so.

Q. Was Captain Miller down in the captain's stateroom with you and Captain Henry at any time on Wednesday night? A. He was.

Q. How long?

A. Well, he was down there possibly fifteen or twenty minutes.

Q. What were you doing down there at the time that he was there?

A. As I stated before on the previous question, I believe it was Captain Haglund came on board and we sat down on the starboard side of the wheel-box directly at the stern of the ship. He said, "I brought you some nice sandwiches here," and he handed me the sandwiches. [2666—1835] I said, "Well, now, Captain Henry would like to have some of those sandwiches, I know." Says I, "That's a very delicate matter, to offer the master of a ship something to eat on board of his own vessel; however, I'll tackle it anyhow," and I took some of the sandwiches down below and I told Captain Henry, "Here are some very nice sandwiches that the Superintend-

(Testimony of J. R. Macaulay.)

ent of the Inter-Island Company has given me; will you have a share?" and Captain Miller was with the captain at that time in his cabin.

Q. That was about what time?

A. Must have been, oh, about sometime between eleven and twelve o'clock.

Q. I see; go on.

A. So the captain, Captain Henry, he was only too pleased to share in with the sandwiches and we sat there and we ate the sandwiches.

Q. About fifteen or twenty minutes?

A. During that time. Captain Miller didn't feel at all shy about accepting a share of the sandwiches, so we all had a share and consumed the sandwiches. Captain Miller said, "I'm going up on deck," and returned afterwards and whispered in my ear, "I believe she's moving," so we went up forward and I took our bearings.

Q. How long afterwards?

A. Directly afterwards.

Q. How long? A. A little afterwards.

Q. How many minutes?

A. I suppose five minutes or so.

Q. Yes.

A. We went up and we didn't see very much alteration in our bearings. We had marks, bearings, to obtain any motion to the vessel seaward or shoreward. We could see very little difference in the bearings but we could feel that she was inclined to move astern, and we stayed there, and the steamers at this time they were pulling for all they were worth and Captain Miller—they were pulling for all

(Testimony of J. R. Macaulay.)

they were worth and she did jump some and away she went.

Q. Was that immediately after that? [2667—1836]

A. She started very slowly at first. It was shortly after that, probably ten or fifteen minutes after that.

Q. Might have been a little less than that?

A. I don't think it was. About that time.

Q. And that was the time that you and Captain Henry and, that is, immediately prior to this was the time that you and Captain Henry, and Captain Miller were down in the cabin?

A. Fifteen or twenty minues previous to that.

Q. But you and the captain were all on deck five or ten minutes after she—that is, on your way. You went on deck, took your observation, and shortly afterwards the boat began to come off?

A. Began to move.

Q. Now, then, Captain Macaulay, how do you make that consistent with your statement that you were on the deck during the last half hour or more preceding the time of the floating of the "Celtic Chief"?

A. If you'll calculate up those minutes you'll find that we was on deck a half an hour previous to the floating.

Q. You were up on deck with Captain Miller, took your observation, and ten or fifteen minutes afterwards she started to come off—that's so, isn't it?

A. Yes, that's about all right.

Q. Now, then, isn't it your testimony that when she started to come that last time she came off very rapidly—so rapidly, in fact, that Captain Miller's

(Testimony of J. R. Macaulay.)

line and shackle in it jammed in the chock and was caught before you were even able to cut away the shackle; isn't that so? A. No, that is not so.

Q. Let us have what the truth of the matter is.

A. The first general motion of the "Celtic Chief" on that line that took a long time.

Q. Now, how long did it take?

A. I can't tell you how long, but it took a long time.

Q. How long?

A. She moved very, very slow. [2668—1837]

Q. How long was it?

A. I don't know how long.

Q. How long did she continue this slow motion?

A. For quite a time.

Q. Let us have your best judgment in minutes.

A. It took from the time she started to twenty minutes past midnight for her to be actually afloat and close up to the "Arcona."

Q. The last portion of the time she went very rapidly and she approached the "Arcona" at a pretty good rate of speed, but the first motion was very, very slow; very slow. In fact, she closed those bearings just so as to see them look gradually lighter?

A. Yes, that was the first portion, and I am positive that I was on deck a half an hour before the ship was actually afloat.

Q. Now, Captain, she must have been moving all that time for ten or fifteen minutes?

A. She was moving for a considerable length of time, of course, I'm not—I don't—I can't say how long.

Q. That was a considerably more important occa-

(Testimony of J. R. Macaulay.)

sion, was it not, than any other preceding occasion had been?

A. The most important occasion to me was the floating of the ship.

Q. And that was—

A. When she was actually afloat. Nobody knows the time, what this steamer was doing or what that steamer was doing, or what Miller Salvage Co. was doing, the fact of getting her afloat was the most important.

Q. But you took sufficient note of time so you have sworn on your oath that you were on deck at least half an hour before she came off?

A. I am right.

Q. You took sufficient note of the time so that you have also sworn on your oath that it was at least ten or fifteen minutes after you and Captain Miller came on deck the last time from the captain's cabin, you noticed the ship began to move, isn't that so?
[2669—1838]

A. Well, I'm giving you the statement just as near as I possibly can.

Q. You've so sworn, haven't you?

A. Well, if you—I don't know what I've sworn to, what questions have been put to me.

Q. And didn't you swear not more than five minutes ago that it was ten or fifteen minutes after you and Captain Miller came up from the captain's cabin that the ship was observed by you to begin to move?

A. I believe it was.

Q. And you took sufficient note of the time to be able to remember that it was at least ten or fifteen minutes before the ship began to move after you

(Testimony of J. R. Macaulay.)

came out of the cabin? Isn't that so?

A. What I've sworn to and what I've told you is the best of my knowledge.

Q. Did you not take sufficient note of the time to know? A. I took no note of the time.

Q. Didn't you take sufficient note of the time so that you were willing to swear not more than five minutes ago that it was at least ten or fifteen minutes from the time you and Captain Miller came on deck until the ship began to move off?

A. I am willing to swear what I swore to five minutes ago still and if I said it was ten or fifteen minutes—

Q. And you did. Kindly answer my question.

A. I'm answering your question.

Q. You did, did you not, take note of the time?

A. I took no note of the time.

Q. You took sufficient note of the time so that you were willing to swear that according to your best memory and judgment it was ten or fifteen minutes, at least, after you came on deck before that vessel started to come off?

A. I am willing to swear to that and do so. I've said that before because I think it is the truth. Now, I'm willing to say, as I sit in this witness-box, that it was a [2670—1839] short period of time after we came on deck that we observed a rapid motion to the vessel, but may have been ten or fifteen minutes and may have been less, but when she started eventually she increased her speed.

Q. So that it was a rapid motion that you observed?

(Testimony of J. R. Macaulay.)

A. I observed her slow motion before her rapid motion began.

Q. Was that ten or fifteen minutes after you came out of the cabin? A. Beg your pardon?

Q. Was that ten or fifteen minutes after you came out of the cabin? A. After?

Q. Yes, was it ten or fifteen minutes after you **came out of the cabin?**

A. About ten or fifteen minutes.

Q. You took sufficient note of the time to be able to swear now that it was ten or fifteen minutes after you came out of the cabin?

A. I took no note of the time.

Q. How are you able to swear that it was at least ten or fifteen minutes?

Mr. WARREN.—Now, your Honor, I think that it is time to interfere.

Mr. OLSON.—The question is allowed?

The COURT.—Yes.

Q. Kindly answer the question, Captain.

A. That is a pretty hard question to answer. For instance, if I'm standing on the corner here waiting to meet a person and there is some delay and I meet that person, I say, "Well, I've been waiting for you here ten or fifteen minutes." The person will say, "That's not possible; you're only five minutes behind the time." I will dismiss the matter of ten or fifteen minutes. There's an instance where a person may not tell actually the time that has elapsed and so it is in this case. So it seemed to me, ten or fifteen minutes after I was on deck.

Q. I'm not asking you whether you noted the time by your watch.

(Testimony of J. R. Macaulay.)

A. It seemed to me that you wanted that.
[2671—1840]

Q. I want you to testify how you were able to tell.

A. It seemed to me that, about.

Q. I'm not doubting or even believing your answer; I'm trying to get the truth of the case.

A. I'm trying to give you the truth of the case.

Q. Now, then, Captain, by the same rule or method of determining the lapse of time, kindly state how much time elapsed after those ten or fifteen minutes had expired until the vessel came off the reef finally. I'm not asking you for the passing of time by the hand of the clock.

A. That is a question that I should think for this Honorable Court to decide and not for me.

Q. And I'm asking you to state what you observed and what is your judgment and recollection in connection with the same. Now, kindly do so.

A. After the ship started to move slowly she increased her momentum as she went astern and the further she went astern the quicker she increased her momentum until she was actually afloat and coming close up to the stern of the "Arcona." The time elapsed was probably half an hour or three-quarters until we were close up to the stern of the "Arcona."

Q. How long would you say elapsed between the time that the "Celtic Chief" actually came off the reef until she came near to the "Arcona"? How long did it take the "Celtic Chief" to travel the intervening distance?

A. From about a half an hour to three-quarters of an hour, as near as I can remember.

Q. You think it took a half an hour or three-quarters

(Testimony of J. R. Macaulay.)

ters of an hour for her to float from the reef until the "Arcona"?

A. Yes, until she was close up to the "Arcona."

Q. From the time that the "Celtic Chief" was actually afloat?

A. From the time that she started. [2672—1841]

The COURT.—The question is, as I understand it, how long did she travel in the water to the "Arcona."

Mr. OLSON.—Now, what I'm asking is, how long a time it took for the "Celtic Chief" to move from the position she was in immediately after she became loose of the reef until she arrived near to the "Arcona"?

A. Oh, that's a new question.

Q. That's the question I asked a few minutes ago.

A. I didn't understand it that way.

Q. Well, go on and answer now.

A. Possibly fifteen minutes or so.

Q. It took fifteen minutes for her to travel four hundred feet, did it?

A. About fifteen minutes or so, as near as I can remember.

Q. And the "Arcona" was in very serious danger of being rammed by the "Celtic Chief" coming with that momentum?

A. Yes, she was for a time.

Q. She couldn't have had much momentum could she, if she was only coming at the rate of four hundred feet in fifteen minutes?

A. She had considerable momentum.

Q. Is that what you call considerable momentum?

A. For a vessel moving, yes. She didn't have a

(Testimony of J. R. Macaulay.)

pressure of canvass but you must remember there was the "Mikahala" towing the "Celtic Chief"; there was the Miller Salvage Co.'s ground tackle pulling her.

Q. Captain Macaulay, assuming that the "Arcona" was six hundred feet away from the "Celtic Chief" before she started to move in deep water toward the "Arcona," that would be about a ninth of a mile, would it not, there being 5,280 feet in a mile? A. Somewhere about that.

Q. And if she was travelling at the rate of six hundred feet in fifteen minutes she would be travelling at the rate of one mile in a little over two hours, wouldn't she? [2673—1842]

Mr. WARREN.—I think, your Honor, that is not a proper assumption.

The COURT.—I allow the question.

Q. Now, then, answer the question, Captain Macaulay. A. What was the question?

(Question read.)

A. Yes, about that.

Q. And you still maintain that that's as fast as she was going when she was in the water?

A. No.

Q. What is your testimony then?

A. Her momentum was increasing as she went astern; she didn't maintain the same rate of speed at any time; from the moment of her starting off the reef she increased her speed and continued to do so until she was entirely afloat and proceeding towards the "Arcona." There was no time at all that her speed was the same.

(Testimony of J. R. Macaulay.)

Q. Now, I'm asking you, Captain, how long it took for her to travel to the point where she was close to the "Arcona" from the time that she was in the—afloat for the first time. Now, answer that question.

A. I've answered that question, I believe.

Q. Is it fifteen minutes or less? A. What?

Q. Fifteen minutes or less?

A. From the time she started?

Q. From the time that she was afloat.

A. About fifteen minutes.

Q. Until she reached the point where she was close to the "Arcona"? A. About that time:

Q. So it took her fifteen minutes after she was afloat to travel a distance less than six hundred feet, after she was afloat?

A. Oh, she never reached the "Arcona."

Q. You said that she came within fifty or a hundred [2674—1843] feet of her.

A. She came pretty close.

Q. Fifty feet? A. About that.

Q. Your testimony is, is it not, that the "Arcona" was not more than six hundred feet away while attached to her? A. About that distance.

Q. When the "Celtic Chief" first came afloat she must have been a little nearer than about five hundred feet from the "Arcona" have proceeded seaward somewhat?

A. Yes, she was approaching the "Arcona."

Q. So that she had to travel then about five hundred feet at the utmost in that fifteen minutes?

A. About that.

Q. She travelled five hundred feet in fifteen minutes? A. About that.

(Testimony of J. R. Macaulay.)

Q. And that was as fast as she was going?

A. We could gauge her speed to a certain extent, but it's a pretty hard matter to get the speed of the vessel while she was increasing?

Q. Didn't you say during the last time she was coming off the reef she traveled pretty rapidly?

A. And increasing.

Q. Do you think she was travelling as slowly as at the rate of a mile in two hours during the last part of the time she was coming off the reef?

A. Well, I have no means of ascertaining her speed at any particular time, but I do know for a fact that her first movement was very, very slow and that her speed increased as she went astern. It wasn't the same at any particular point. It was always increasing until she was afloat and approaching the "Arcona."

Q. Now, Captain Macaulay, kindly state how long, according to your best judgment and recollection, it was from the time that you first observed that she was beginning to move slowly until she was afloat, actually afloat for the first time. [2675—1844]

A. About half an hour or so.

Q. A half an hour. Would it be less than a half an hour? A. Somewhere in that vicinity.

Q. And fifteen minutes later she came within fifty feet of the "Arcona"? A. About that.

Q. So that from the time that you first observed her beginning to move slowly until she came within fifty feet of the "Arcona," forty-five minutes had elapsed? A. Somewhere about that.

Q. Who else was with you on the poop observing

(Testimony of J. R. Macaulay.)

this motion of the "Celtic Chief" at first, this slow motion?

A. Captain Haglund, I believe, was there.

Q. Anybody else?

A. I forget of any other person being there.

Q. Wasn't Captain Miller there?

A. No, I believe Captain Miller was down on the main deck at that time.

Q. What was he doing there?

A. He was tending to his gear.

Q. Where were you at the time that that shackle was jammed and was being pulled through the chock?

A. I was right alongside of that chock.

Q. That's on the poop, isn't it?

A. That's on the after end of the poop.

Q. Now, Captain, how long was it that she kept moving in this slow fashion that you have testified to? How long did it continue to move slowly off the reef before she began to get any considerable momentum?

A. I should say she moved very slowly for about ten or fifteen minutes.

Q. There was no question in your mind that she was moving forward?

A. That was a certainty.

Q. Absolute certainty? A. Yes.

Q. And Captain Haglund was the only man that you observed on [2676—1845] the poop with you?

A. Captain Henry may have been there.

Q. Do you know when it was that one of the German cruiser's officers came on board the "Celtic Chief" about that time? A. After that time.

Q. How long after that time?

(Testimony of J. R. Macaulay.)

A. Might have been five minutes or so.

Q. He was on the poop there then during the last five or ten minutes of this slow motion of the "Celtic Chief"?

A. The commander of the "Arcona" was on the poop, also the executive officer, while she was still, was travelling slowly?

A. While she was travelling slowly, of course, she was increasing. She really at that time had moved fifty feet about.

Q. Now, Captain Macaulay, you said that you first noticed that the ship was moving seaward slowly after you came out of the cabin with Captain Miller, about five minutes after you felt this seaward motion, the commander of the "Arcona" and the first officer came up on the poop and sat there observing it with you; isn't that right?

A. Pretty near correct.

Q. It continued to move slowly seaward for five or ten minutes more; is that right? A. Yes.

Q. And for the remaining ten or fifteen minutes of the full hour that she was moving off the reef she was moving very rapidly? A. She was increasing.

Q. Was anything said at that time about the "Arcona's" being signalled to begin to pull? Did it occur to you, Captain Macaulay, to suggest that it might be wise to get all of the force that it was possible including the "Arcona"? A. Yes.

Q. What did you say? [2677—1846]

A. I said to the executive officer of the "Arcona," "Why don't you steam ahead?"

Q. When was that that you said this to him?

A. The ship was coming astern.

(Testimony of J. R. Macaulay.)

Q. How long after they came on the poop?

A. Shortly after.

Q. How long?

A. I can't tell you exactly.

Q. Ten or fifteen minutes afterwards?

A. It may have been later.

Q. How long then? Didn't it occur to you that during *of of* these ten or fifteen minutes after they first came on the poop while the vessel was travelling slowly seaward, when you knew for a certainty that she was beginning to come, didn't it occur to you that it would be wise to get all of the forces at work on her, and why didn't you then suggest that the "Arcona" help? A. I did suggest it.

Q. Ten or fifteen minutes afterwards. Why didn't you do so at first?

A. Because there was an arrangement made with the "Arcona" to send a signal on board of the "Celtic Chief" with an officer and it was for this officer to observe the motions of the "Celtic Chief" and he was directed by the commander of the "Arcona" the moment he saw the ship move to show a rocket and alarm the "Arcona."

Q. Was this signal made on the "Celtic Chief" when the executive officer and man came?

A. The signal-man came on board with the executive officer and he was standing on back of the pilot-house.

Q. Now, then, you said this was about five minutes after she was beginning to move seaward. Did you suggest to the commander and the executive officer that the "Celtic Chief" was moving or suggest that they direct that their signal be given?

(Testimony of J. R. Macaulay.)

A. I did not. [2678—1847]

Q. You waited ten or fifteen minutes after—

A. It wasn't part of my business at all to make any suggestion for signals.

Q. You did suggest it?

A. Says I, "Why don't you steam ahead?"

Q. You did call the executive officer's attention to the fact that it would be better to steam ahead?

A. I did.

Q. Ten or fifteen minutes later?

A. I said, "Why don't you steam ahead."

Q. In the meantime you had been sailing for ten or fifteen minutes?

A. Or in other words, I wasn't running the "Arcona."

Q. It never occurred to you that in view of the fact that you regarded yourself in duty bound to do everything possible to get the "Celtic Chief" off the reef, it never occurred to you that it was a part of your business to even make a suggestion to the officers of the "Arcona" that inasmuch as the "Celtic Chief" was beginning a motion seaward they had better give the help of the "Arcona"?

A. I had the idea.

Q. Why didn't you act upon that idea?

A. Because at that time there was no further assistance required.

Q. Oh, that was the reason?

A. The vessel was approaching her very rapid and the "Arcona's" assistance at that time would be too late.

Q. I see.

A. That is so. There is no use in me giving any

(Testimony of J. R. Macaulay.)

advise on that matter.

Q. Captain Macaulay, you said that it took a half an hour after she first began her seaward motion?

A. I say so still.

Q. And it was five minutes after that the officers came on the poop? A. About that time.

Q. So that about twenty-five minutes later the "Celtic Chief" [2679—1848] came off the reef finally? A. That's so.

Q. And you, nevertheless, thought that it was unnecessary to ask the "Arcona" to give any assistance during these twenty-five minutes of more or less uncertainty as to whether or not the "Celtic Chief" would come off?

A. There was no uncertainty about it.

Q. Why didn't it occur to you that it would be wise to leave nothing open to chance?

A. There was no chance after she had started.

Q. You are absolutely certain? A. Sure.

Q. Suppose one of these sudden swells that you talk about had begun to come in, then what?

A. The ship had sternway at that particular time and the ship was going into deep water, and if swells had come at that time there was sufficient help there to take care of the ship without any further assistance from the "Arcona."

Q. But you knew, Captain Macaulay, from the time that they came aboard, the German cruiser officers, it was fully twenty-five minutes according to your testimony before she finally came off. Do you mean that she was travelling so rapidly during the first ten or fifteen minutes of that twenty-five minutes that there was absolutely no question as to

(Testimony of J. R. Macaulay.)

whether or not she would come off?

A. After the ship started there was absolutely no question as to the final result.

Q. And she was travelling so rapidly during that first ten or fifteen minutes that no matter what occurred and still might have occurred suddenly, it would not in any way have retarded the progress of the "Celtic Chief"?

A. To the contrary; it would have helped her.

Q. It would? A. It would.

Q. Now, then, Captain Macaulay, how many feet do you suppose she was travelling per minute?

A. I have no idea. [2680—1849]

Q. How far was she on the reef?

A. Her whole length.

Q. That was about a little over two hundred feet?

A. Yes.

Q. It took her about half an hour to move 260 feet or less before she was in deep water?

A. Well, if after she moved she increased the depth of water—from her start to her final touch of the reef, she was increasing the depth of the water as she was coming astern.

Q. Captain Macaulay, did she have to move the full length of the "Celtic Chief" before she was really afloat? A. No, not necessary.

Q. Didn't she have to travel considerably less than 260 feet? A. She did.

Q. As a matter of fact she only had to move forty feet? A. Well, I wouldn't—

Q. Now, wait a minute, Captain. Didn't you testify that the forty feet heaved in on the Miller Salvage Company's line was sufficient to bring the

(Testimony of J. R. Macaulay.)

“Celtic Chief” off? A. I did.

Q. So she only had to travel forty feet from the time she began to move until she was really clear; isn't that so? A. That is so.

Q. So that it took her twenty-five minutes, no, it took her twenty minutes to travel forty feet and yet she was travelling so rapidly during the first ten or fifteen, after the first five minutes had elapsed, that there could have been no question in your mind that she would come off even though the “Arcona” did not assist? That was clear in your mind?

A. Very clear.

Q. So clear that you were willing to take any chance against it?

A. I was willing to take the chance of dispensing with the services of the “Arcona.”

Q. Did it occur to you, Captain, that the German cruiser is [2681—1850] a Government vessel which never makes claims for salvage?

A. I did not take that into consideration.

Q. You know that Government vessels never make claims?

A. I don't know about their agreement.

Q. You never heard of that?

A. I never heard that.

Q. You mean to say, during your forty years as a navigator, that you never heard sufficient to satisfy your own mind that Government vessels never make claims for salvage?

Mr. WARREN.—I object to the question as immaterial.

The COURT.—I will allow the question.

A. I've always understood that a Government ship

(Testimony of J. R. Macaulay.)

would give her assistance to any other ship free of charge.

Q. Yes. Now, then, you knew that the German cruiser was a German cruiser and was a Government vessel?

A. I knew she was a German cruiser and a Government vessel.

Q. Now, then, Captain Macaulay, you testified that it was a part of your desire earlier in the case to keep the expenses of getting the "Celtic Chief" off the reef as low as possible. A. It was.

Q. And it didn't occur to you, Captain Macaulay, that it might be a good thing for the vessel to have a Government vessel that would charge nothing give its services to her? A. It did occur to me.

Q. Why, then, didn't you suggest that the "Arcona"—

A. I did suggest that the "Arcona" start pulling. I gave the "Arcona" all the advice I possibly could.

Q. Did you suggest that during the first few minutes of these officers' being on the deck, poop deck?

A. I did not.

Q. You waited ten or fifteen minutes?

A. Yes, I did.

Q. Though the vessel was moving so rapidly that it would be practically impossible for the "Arcona" to get under way and put [2682—1851] any force, strain upon her lines?

A. I was under the impression that the "Arcona" was ready at any instant to give assistance to the "Celtic Chief." At that particular time that you refer to, this five or ten minutes, I was observing the marks on shore to find the motion of the "Celtic

(Testimony of J. R. Macaulay.)

Chief." I couldn't give my attention to everything at that particular moment. I wanted to make—

Q. Beg your pardon?

A. I wanted to make myself sure that the "Celtic Chief" was moving in a safe direction. That took time, ten or fifteen minutes, before I felt positive that the vessel was going to the southward.

Q. Captain Macauley, didn't you testify that you had observed this seaward motion during five minutes preceding the executive officer's coming aboard, and haven't you testified that you were already positive that she would come seaward?

A. I say so still.

Q. Didn't it occur to you then that it would be wise to make this an absolute certainty by getting the assistance of the "Arcona"? A. I did.

Q. Did you suggest that to the officer before ten or fifteen minutes had elapsed?

A. I suggested to the executive officer of the "Arcona" as soon as possible, "Steam ahead with your ship," and his answer was, "We can't steam ahead." I says, "Heave away on your anchor, do something to get away," and they heaved away on their anchor and proceeded out to sea. That is, they get a strain on their lines and went ahead on their propeller.

Q. Haven't you testified here, sworn on your oath, that the officers of the German cruiser were up on the poop deck with you at least ten or fifteen minutes?

A. Yes, they were doing exactly as I was doing.

Q. Did you not wait for ten or fifteen minutes after they had come up on the poop alongside of you before you suggested that they steam ahead?

A. I did. [2683—1852]

(Testimony of J. R. Macaulay.)

Q. Now, then, Captain Macaulay, you were more certain than before, at that time when you gave that suggestion, that she was going to come off the reef?

A. The more she came off the more positive I was.

Q. Before that time you hadn't been so positive?

A. When she started.

Q. Now, then Captain Macaulay eventually that she steamed ahead, when you were sure that she was coming off without any question at all?

A. In the first place, I didn't believe it would be the proper thing for me to try to tell a commander of a German man-of-war how to proceed or how to manoeuver his own ship.

Q. Just a moment. Weren't you pretty free in your advice when she parted the first line?

A. I was.

Q. You didn't stand back from giving advice at that time?

A. No, I gave advice to the master of the ship.

Q. Didn't you advise the commander of the "Arcona" or the first officer? A. Yes.

Q. And you did not refrain from giving advice to the "Arcona" early in the game? A. Quite right.

Q. Haven't you just testified that it wasn't your place to give advice— A. To the commander.

Q. And it was because the commander had come now and he was a man of greater dignity?

A. I gave the commander good advice before and until the "Celtic Chief" was practically off the reef.

Q. Where?

A. When the commander of the "Arcona" was on the poop of the "Celtic Chief" I gave him advice.

(Testimony of J. R. Macaulay.)

Q. When?

A. Previous to the shackle coming into the chock of the Miller Salvage Co., I gave him good advice.

Q. What was the advice that you gave?

A. When the shackle came in and jammed in the chock, [2684—1853] I advised the commander to stand clear.

Q. At the same time you hesitated thereafter about even suggesting to him to give any assistance to the "Celtic Chief"?

A. I advised him right from the start to the finish. I advised him to steam ahead and he told me that he could not steam ahead. Then my second advice was, heave away on your anchor chain.

Q. But you didn't give that advice, did you, until ten or fifteen minutes after he had come up on the poop?

A. I couldn't give him the advice before he came on the poop.

Q. Did you give advice during the ten or fifteen minutes?

A. As soon as I thought it was necessary.

Q. In other words, the fact of the matter is that you never hesitated to give advice or suggestions to the "Arcona" officers when you did regard it necessary to get assistance during the first ten or fifteen minutes of the half hour that the "Celtic Chief" was gradually moving seaward, that's the truth?

A. No, it's not the truth. It's far from it.

Q. Tell me how that is in any way wide of the truth.

A. Because I gave the "Arcona" good advice to

(Testimony of J. R. Macaulay.)

the best of my knowledge how to manoeuver and how to act.

Q. Didn't you swear, Captain Macaulay, that you waited for ten or fifteen minutes after they had come up alongside of you on the poop, all of which time the "Celtic Chief" was moving seaward?

A. Did I make any suggestion to the "Mikahala," did I make any suggestion to the "Helene," did I make any suggestion to the Miller Salvage Company?

Q. They were all pulling?

A. Well, why wasn't the "Arcona pulling?

Q. Didn't it occur to you that it might be wisdom to get the assistance of the "Arcona" in view of the fact she was not pulling?

A. When I found she wasn't pulling I asked them to steam ahead.

Q. Oh, you hadn't observed that she wasn't pulling—is that the fact, Captain? [2685—1854]

A. No, no. I did.

Q. You knew she wasn't pulling?

A. I knew she wasn't pulling.

Q. Why do you say you waited until you saw that she wasn't pulling before you gave this advice? Isn't that the testimony? Why did you wait until you found they were not pulling before you gave this advice, if you knew prior to this advice actually that she wasn't pulling?

A. It was simply impossible for me or any other man to observe all the manoeuvres of the different vessels at that particular time. I didn't observe the "Arcona" when I was watching the other vessels. There was the Mikahala," there was the "Helene"

(Testimony of J. R. Macaulay.)

there, there was the Miller Salvage anchor out astern and there was the "Arcona." Directly when I saw that the shackle was going to get jammed I went down on the main deck and procured a capstan bar and released that shackle myself. Here was the executive office; I advised him as soon as possible to steam ahead. He said he couldn't do it on account of being afraid of getting his heaving lines in his propeller.

Q. Do you know that the "Arcona" was pulling up to the time that you gave that suggestion that he steam ahead? A. He didn't say so to me.

Q. Had you observed her? A. I did.

Q. You knew she was not pulling?

A. I am of that opinion.

Q. There was no strain on it.

A. Yes, there was no strain on it.

Q. So you knew she wasn't doing any pulling?

A. That's my impression.

Q. Now, do you wish to vary your testimony?

A. I'm not going to start off and tell you things I'm not positive of.

Q. Are you positive that the "Arcona" was not pulling or aren't [2686—1855] you positive about that? A. What would you call pulling?

Q. I'm asking you a question.

A. If the lines were slack she was not pulling in my estimation.

Q. Are you positive that there was no strain on her lines?

A. I am positive that there was no strain on her lines.

(Testimony of J. R. Macaulay.)

Q. Now, then, Captain Macaulay, were you positive of that fact from the time that the "Celtic Chief" was moving seaward up to the time you first gave this suggestion to the executive officer of the "Arcona"? A. Positive of what?

Q. That there was no strain on the "Arcona" lines? A. I was.

Q. Why, knowing that to be the fact, didn't you suggest before ten or fifteen minutes had elapsed at any part of which you could have suggested to the "Arcona's" officers—why didn't you suggest to them that the assistance of the "Arcona" must be had in order to insure the final floating of the "Celtic Chief"?

Mr. WARREN.—I object to the question on the ground it has been asked and answered, several times.

Mr. OLSON.—I withdraw the last question. In order to make it clear, why, Captain Macaulay, if you knew and were positive that there was no strain upon the "Arcona's" lines during the first fifteen minutes or twenty minutes of the time that the "Celtic Chief" was moving seaward, according to your observation, why didn't you suggest as soon as the "Arcona" officers came on board and up on the poop alongside of you, that the "Arcona" now give assistance and attempt to get the "Celtic Chief"—pull to get the "Celtic Chief" out of her precarious condition.

Mr. WARREN.—Same objection.

Q. In view of the fact that the other agencies were pulling and that the "Arcona" was not. [2687—1856]

(Testimony of J. R. Macaulay.)

Mr. WARREN.—Same objection.

The COURT.—Objection overruled.

Q. Why did you wait ten or fifteen minutes before making that suggestion?

Mr. WARREN.—That is a repetition.

Q. Let us have the first question.

(Question read.)

A. At that time the “Arcona” officers came on board, as near as I can remember, the executive officers came on board and also a signal-man. I observed that very closely. The signal-man was stationed or ordered to go on deck of the pilot-house with his signal light. At this time the “Celtic Chief” was moving. He explained, the executive officer explained to the signal-man in German, which I could not understand, how to burn or show those signal lights.

Mr. OLSON.—Now, then, if the Court please, I move to strike the lights on the ground that it is obvious that the witness doesn’t know what instructions the officer was giving to the signal-man.

A. He was talking his own language with this signal-man.

Mr. OLSON.—I move to strike on the ground he couldn’t understand.

The COURT.—That may be stricken.

A. The executive officer was talking with this signal-man. I didn’t wish to interrupt the officer while he was talking. That took considerable time.

Q. Fifteen minutes?

A. It took considerable time. The exact time I don’t know. The next thing I saw was the signal-

(Testimony of J. R. Macaulay.)

man throwing these lights, then I said to the executive officer, "Why don't you go ahead?" something to that effect. Go ahead, his lines were all slack at that time. Now, that took ten or fifteen minutes.

Q. Now, that's the reason?

A. That was one of the reasons. Now, I wasn't standing there listening back of this executive officer and this signal-man only. I was at the same time taking bearings of the vessel. I couldn't be at a half a dozen parts of the ship. [2688—1857] I was doing the best I could for the ship.

Q. Were you giving orders and moving about?

A. Giving advice.

Q. Giving advice to anybody during those ten or fifteen minutes preceding this?

A. At that particular time I wasn't.

Q. Why didn't you make the suggestion to the commander who was giving these orders?

A. I didn't see the commander at that time.

Q. He was not on board the poop deck?

A. He may have been.

Q. Didn't you say a few minutes ago that after five minutes you observed the "Arcona" officers, the commander and the signal-man come up on the poop deck? A. I believe so.

Q. Why didn't you make this suggestion to the commander?

A. I had no conversation with the commander, only on that occasion I asked the commander to stand clear of that shackle or he might get hurt, and he didn't seem to pay any particular attention to that advice and the shackle did come in and strike him in the leg.

(Testimony of J. R. Macaulay.)

Q. Now, then, Captain Macaulay, isn't the real truth of the matter this, that you and Captain Miller and Captain Henry were down in the cabin until there was a bump felt when the "Celtic Chief" finally began to move off and you all rushed out on deck and by the time you had got on deck and reached the poop the "Celtic Chief" was off?

A. That is not the truth.

Q. If Captain Miller says that is true it's not true?

A. I don't know what Captain Miller says.

Q. If he says that he's not telling the truth?

A. He's not telling the truth.

Q. Could there be any doubt about the German officers' being there without observing the seaward motion of the "Celtic Chief" from the time they came up on the poop alongside of you? [2689—1858] Could there be any doubt about their having observed it?

A. No, I don't believe there could have been any doubt. They could just see any difference the same as I could.

Q. Didn't you point it out to them?

A. Yes, I believe I did.

Q. Didn't both of them jump in their places?

A. They fired their signals immediately afterwards.

Q. How soon was it after you told them that they jumped in their places? A. I can't remember.

Q. How soon? A. I can't remember.

Q. How soon, approximately?

A. I don't remember whether I told them whether she was moving or not.

(Testimony of J. R. Macaulay.)

Q. Why did you say a few moments ago that you did tell them?

A. Possibly I did. I may have told them so but I may not have told them in time for them to do anything.

Q. Now, you believe you did or do you believe you didn't?

A. I believe I remarked to the executive officer, "We're approaching you very closely."

Q. Didn't you tell them when they first came up on the poop?

A. I forget what I did say when they first came on the poop.

Q. Didn't you say, Captain Macaulay, that you pointed out to them that the ship was moving seaward and they took the same observations that you did. Didn't you testify to that not more than a minute ago?

Mr. WARREN.—Now, I submit, your Honor, that is simply misquoting the testimony.

Q. Now, then, Captain, I withdraw the last question, then, and we will forget this and get at the truth of the matter. When you pointed out to them that the vessel was moving seaward did they take note of the fact? A. I suppose they did.

Q. Did they? A. Well—

Mr. WARREN.—I think that's an answer your Honor. [2690—1859]

The COURT.—I allow the question.

Q. Answer the question, Captain Macaulay.

A. What was the question?

Q. Did they note that the vessel was moving seaward?

(Testimony of J. R. Macaulay.)

A. As near as I could understand or observe, they did by burning their signals.

Q. But not before then as far as you know?

A. Well, the fact of them coming on board the ship at the time they did they could see that there was something doing on board of the "Celtic Chief" and they came aboard and I presume they observed the vessel's movements seaward at that time.

Q. How long was it after you pointed out to them that the vessel was moving seaward that they took note of that fact? A. Just about that time.

Q. Immediately after you pointed it out?

A. About that time.

Q. And that was the first time that you had pointed it out to them?

A. I believe that I did give them what I thought was the movements of the vessel the moment they came on board, or something to that effect. I really forget exactly what transpired between the German officer and myself.

Q. When they came up on that poop, did you immediately point out the fact that the vessel was moving? Did they think so?

A. Immediately after they came on the poop their attention was to have this signal-man placed on deck of that pilot-house. That was, I suppose they considered their first duty.

Q. Do you know, Captain Macaulay, whether or not you told them or pointed out to them that the ship was moving seaward?

A. I can't tell you what I did do at all.

Q. Do you know that that was told them or any-

(Testimony of J. R. Macaulay.)

thing of the kind? A. I can't remember.

Q. But you do know that it was not until fifteen minutes [2691—1860] later that you made the first suggestion to them that the "Arcona" steam ahead.

Mr. WARREN.—I object to the question as asked and answered several times.

The COURT.—Objection overruled.

Q. Answer the question.

A. It was not very long afterwards until I advised the executive officer of the movement of the ship. Might have been ten minutes, might have been fifteen minutes, more or less, I can't remember how long it was, but I got into touch with the executive officer of the "Arcona" as soon as I possibly could and gave him the advice that I thought was best for the "Celtic Chief" and also for the "Arcona." I believe that my first advice to the executive officer was to steam ahead as soon as possible. His answer to that advice was that they couldn't steam ahead.

Q. I'll ask you now if that was the first advice that you gave to the German officers after they came on the poop? A. I really forget.

Q. You don't know? A. I really forget.

Q. Did you not say before it was at least ten or fifteen minutes before you suggested to them that the "Arcona" steam ahead?

A. I believe I did say so.

Q. And that is the truth?

A. As near as I can remember.

Q. During the meantime the "Arcona" was not pulling? A. I believe she was not pulling.

(Testimony of J. R. Macaulay.)

Q. You know that?

A. I could see the line slack.

Q. And yet during that ten or fifteen minutes time, while the "Celtic Chief," to your knowledge, was moving seaward slowly, you did suggest to the German officers that the "Arcona" render her assistance?

Mr. WARREN.—Now, I object again, your Honor. That is the same question over and over again.

The COURT.—I think that's covered, Mr. Olson.
[2692—1861]

Mr. OLSON.—If the Court please, the witness has varied it every time I have tried to hold him down to that point.

The COURT.—We will continue the matter until two o'clock.

Recess.

The COURT.—The objection is overruled.

Q. Answer the question, Captain Macaulay.

(Question read.)

A. I did as soon as possible.

Q. Did you during that ten or fifteen minutes?

A. It may have been about that time.

Q. Before you did, you mean? A. Before I did.

Q. Do you mean to say that it was impossible during those ten or fifteen minutes before you gave the suggestion or advice, to make a suggestion or give the advice?

A. I may have been otherwise engaged during those ten or fifteen minutes.

Q. Isn't it the fact, Captain, that the reason why

(Testimony of J. R. Macaulay.)

you didn't give any suggestion or advice was because the lights were fired off just as soon as the officers came on the poop and before the time had elapsed?

A. It is not a fact.

Q. Now, how long was it before the vessel was actually off the reef that these lights were fired, the signals to the "Arcona"?

A. I don't remember what period of time.

Q. Well, how long as far as you can remember now?

A. I have no idea of minutes or seconds.

Q. Well, all right then.

A. Oh, it was a few minutes.

Q. Now, Captain, you said that it was a half an hour, according to your best judgment and recollection, from the time that you first saw the vessel beginning to move until the "Celtic Chief" actually came off the reef. That is so, isn't it?

A. That is so. [2693—1862]

Q. It was five minutes, was it not, according to your best judgment and recollection, after you noticed this seaward motion of the "Celtic Chief" when the German cruiser officers came up on the poop? That is so, is it not?

A. Well, about that time that the vessel started and was eventually floated. There was a considerable hurrying-scurrying around there.

Q. But you have testified, have you not, that it was about five minutes after you first noticed this seaward motion of the "Celtic Chief" that you noticed the German cruiser officers on the poop deck?

A. Everything that I have testified in this court

(Testimony of J. R. Macaulay.)

I am willing to stand by and I believe it to be the truth.

Q. Then it is according to your best knowledge and belief and your best judgment and recollection that it was five minutes about, after you noticed the first seaward motion of the "Celtic Chief" before the German officers came on the poop, you having so testified before.

Mr. WARREN.—I don't remember that it was five minutes.

The COURT.—I allow the question.

Q. Answer the question, Captain Macaulay.

Mr. WARREN.—I move that your Honor reconsider that ruling and allow me to be heard.

Mr. OLSON.—I withdraw the question. You did testify, did you not, Captain Macaulay, that it was about five minutes from the time that you first noticed a seaward motion of the "Celtic Chief" to the time that the "Arcona" officers came up on the poop?

A. To the best of my recollection I have tried to explain to the Court that I have taken no note of time at all during the time I was on board of the "Celtic Chief." I testified that it was a continuous day and a continuous night.

Mr. OLSON.—Now, if the Court please, I wish to interrupt the witness' answer because it is not responsive to my question. [2594—1863]

The COURT.—The captain has explained that and I understand that he didn't take notice of the time. Captain Macaulay, will you answer the question again, please, leaving out the explanation about

(Testimony of J. R. Macaulay.)

your not taking note of the time?

(Question read.)

Q. Did you so testify?

A. I might and I might not.

Q. Now, then, Captain Macaulay, you have repeated time and time again that the testimony that you have given is the truth to the best of your knowledge and belief. Now, then if you testified before the noon hour that it was about five minutes after you first noticed a seaward motion of the "Celtic Chief" that the "Arcona" officers came up on the poop, then that is the truth?

A. If I have so testified, I testified to the truth to the best of my knowledge and belief.

Q. On that point?

A. On that point and every other point.

Q. Now, then, you have stated, Captain Macaulay, that it was about ten or fifteen minutes after the German officers came on the poop when you, for the first time, suggested or advised the German officers that the "Arcona" steam ahead? That is correct, isn't it?

Mr. WARREN.—I admit it's correct your Honor.

Mr. OLSON.—Answer the question, Captain.

Mr. WARREN.—It's repetitious, your Honor.

The COURT.—I allow the question.

Q. Now, answer the question, Captain. Isn't that the way that you have testified, that it was about ten or fifteen minutes?

Mr. WARREN.—Now, your Honor, simply because this is cross-examination you shouldn't open the doors as wide—

(Testimony of J. R. Macaulay.)

The COURT.—I've ruled this time.

Mr. WARREN.—I offer in the record, now, to admit the fact, your Honor, that the witness has testified to that several times. [2695—1864]

Mr. OLSON.—Your admission is in the record and I want the captain's testimony also on the point and the Court has already ruled that I may have it. Now, then, will you answer the question, Captain Macaulay? Did you not so testify?

A. To the best of my knowledge and belief it was about ten or fifteen minutes when I addressed the executive officer of the "Arcona" and asked him why he didn't steam ahead.

Q. All right. Now then—

A. Or something similar. The exact words may not be the same but to the best of my recollection that was the effect.

Q. And it was about that time, was it not, Captain Macaulay, that the signals were fired off, signals to the "Arcona"?

A. About that time, yes.

Q. As a matter of fact, you have testified, have you not, that it was at that time?

A. About that time.

Q. Well, was it five minutes more that time or what was it? Do you mean approximately at the exact time? A. About that time.

Q. When you say about do you mean that it's within a half hour or within a half a day?

A. I mean it is within a half an hour.

Q. Now, is it then anything less than a half an hour? A. Yes.

(Testimony of J. R. Macaulay.)

Q. How much less than a half an hour?

A. A few minutes.

Q. Twenty-five minutes?

A. I can't exactly say how many minutes.

Q. How long was it before you made that *suggest* that those lights went off?

A. I don't remember.

Q. Was it before you made that suggestion that the lights were fired off?

A. I don't remember whether it was before or afterwards.

Q. It may have been before as far as you remember? A. It may have been. [2696—1865]

Q. Now, then, Captain Macaulay, it was at least ten minutes after you made that suggestion to the "Celtic Chief" officers before the "Celtic Chief" came off the reef, was it not?

A. The "Celtic Chief" was going astern at that time.

Q. Was it not at least ten minutes from that time until the "Celtic Chief" was afloat for the first time?

A. I don't know.

Q. Haven't you testified that it was a half an hour from the time that you first noticed a seaward motion of the "Celtic Chief"?

A. I testified that it was from half an hour to three-quarters of an hour.

Q. Then it was at least ten minutes after you made this suggestion to the "Arcona" officer before the "Celtic Chief" was afloat? A. I can't say.

Q. Might it have been less than that?

A. I have no idea how long it was.

(Testimony of J. R. Macaulay.)

Q. May it have been as much as a half an hour afterwards? A. No, impossible.

Q. May it have been as much as twenty-five minutes after you made that suggestion? Answer the question. A. I've answered the question.

Q. Answer it again. A. I don't know.

Q. It may have been?

A. It may have been and it may not have been.

Q. But to the best of your recollection it may have been?

A. To the best of my recollection it may have been or it may not have been.

Q. All right. You don't know?

A. I don't know.

Q. That is the truth?

A. I have stated nothing else but the truth while I have been on the stand.

Mr. WARREN.—It's very absurd for counsel to keep on that question that long.

Mr. OLSON.—I withdraw the last question that I asked the [2697—1866] witness and put it in another way. According to your recollection and judgment, Captain Macaulay, can it be said with truth that the "Celtic Chief" was afloat at a moment or two after the firing off of those signals to the "Arcona"?

A. To the best of my knowledge and belief at the exact time of the firing of those signals from the signal-man of the "Arcona," the "Celtic Chief" was actually afloat.

Q. It was? A. Yes, sir.

Q. So that you did not make any suggestion to the

(Testimony of J. R. Macaulay.)

German cruiser officers that the "Arcona" steam ahead until the "Celtic Chief" was afloat?

A. I didn't consider it necessary at that time.

Q. Answer my question. Had you made any suggestion that the "Arcona" steam ahead or give any assistance until the "Celtic Chief" was afloat?

Mr. WARREN.—Object to the question, your Honor; he's just answered it that he did not consider it necessary.

The COURT.—I overrule the objection.

Q. Answer the question, Captain Macaulay.

A. What's the question?

(Question read.)

A. I believe I did.

Q. How long before she was afloat?

A. I have no recollection of time at all. I took no note of any time that I gave any advice to the executive officer of the "Arcona." There is only one instant when I looked at my watch and observed the time, that is when the ship was actually afloat and away out in the ocean. Now, there is another time that I took off my watch.

Q. I don't care anything about that.

A. I do. I wish to state what I am positive about.

Mr. OLSON.—I object to the witness volunteering testimony.

The COURT.—Captain Macaulay, in cross-examination and all [2698—1867] examination we've got to limit ourselves to the questions. Of course, when your attorney has his redirect you'll have full opportunity to explain more at length. Of course, I

(Testimony of J. R. Macaulay.)

understand perfectly, Captain Macaulay, your answer so far. I understand that perfectly, Captain Macaulay.

Q. Now, then, Captain Macaulay, if you gave advice to the executive officer of the German cruiser, or the suggestion, if you wish so to call it, that the "Arcona" steam ahead before the "Celtic Chief" came off and the signals to the "Arcona" were not given until the "Celtic Chief" was safe, there must have been a lapse of some time between those events, must there not? A. Surely!

Q. How much time had elapsed between the two?

A. A few minutes, I suppose.

Q. When you say a few minutes, do you mean as much as ten or fifteen minutes?

A. Somewhere about there.

Q. About ten or fifteen minutes?

A. Somewhere about there, I wouldn't say exactly to the minute, but it was a short period of time.

Q. Might it be as much as twenty minutes?

A. No, I don't think it possible for it to be so long.

Q. Might it be as little as five minutes?

A. No, more than five minutes.

Q. It's more than five minutes and less than twenty minutes? A. Yes, that is so.

Q. So that the suggestion that you made to the "Arcona" was made more than five minutes but less than twenty minutes before the signals were fired for the "Arcona"?

A. Well, I'm not positive about that.

Q. Well, you've so stated just now, haven't you?

(Testimony of J. R. Macaulay.)

A. Well, I have stated that it was five, ten, or fifteen minutes, but I'm not positive about that now. I want to explain to you as near as I can the situation at that time.

Mr. OLSON.—If the Court please, it would not be responsive [2699—1868] and I submit the witness has no right to volunteer testimony.

The COURT.—That's a matter that your attorney will bring out.

Q. Now, then, Captain Macaulay, when, however, you said it was more than five minutes but less than twenty, that was the best of your present judgment and recollection?

A. I thought so. I think so still that it was about that time.

Q. So that the giving of that suggestion and the firing off of those lights were not coincident when they happened within a few moments of each other?

A. They did happen near together.

Q. But not less than five minutes?

A. But not less than five minutes.

Q. But it was not coincident?

A. Well, they were pretty close together. The whole thing was done in a very short period of time.

Q. Then, according to that testimony, Captain Macaulay, the "Celtic Chief" must have been just about ready to slip off the reef into deep water when you made that suggest?

A. Oh, no, she had already slipped.

Q. Into deep water? A. Into deep water.

Q. Was she afloat?

(Testimony of J. R. Macaulay.)

A. Well, she had to travel a certain distance before she'd be afloat.

Q. Had she travelled forty feet yet?

A. Beg pardon?

Q. Had she travelled forty feet yet?

A. When she had travelled forty feet she was afloat.

Q. Well, had she done that by the time that you made that suggestion? A. I believe she had.

Q. So that she was afloat when you made that suggestion to the first officer of the "Arcona"?

A. I believe I made the suggestion before that.

Q. Then she hadn't travelled forty feet, had she, when you made that suggestion?

A. No, I don't believe she had. [2700—1869]

Q. About what time was it those lights were fired off with reference to the time that you went off from the poop deck to get a pin and helped get that shackle out of the chock?

A. About what time was it you say?

Q. With reference to that time about what time was it that you made the suggestion—with reference to the time that you went off of the poop to get a pin with which to attempt to get the shackle out of the chock? Before or after?

A. I went down to get—you mean the capstan bar. I didn't get a pin.

Q. All right, Captain. It was something with which to get the shackle out of the chock, whatever it was?

A. I went to get the capstan bar to pry the shackle

(Testimony of J. R. Macaulay.)

out of the chock afterwards.

Q. After you had made that suggestion?

A. Yes, afterwards.

Q. Had the lights already been fired by that time?

A. I believe they had.

Q. What was the first officer of the "Arcona" doing at the time you made that suggestion to him?

A. He was standing close alongside of me and holding conversation occasionally with the "Arcona" and also the signal-man.

Q. Didn't you say that he was, at that time, giving directions to the signal-man and that the signal-man at once fired off the lights? Didn't you so testify? A. I did.

Q. So that the firing of the lights followed pretty close upon making that suggestion?

A. I made no suggestion of firing the lights.

Q. Did you not make a suggestion that the "Arcona" steam ahead and wasn't it at that time that the "Arcona" officer directed the signal-man to fire the lights? A. The lights were fired at once.

Q. Immediately upon your making that suggestion to the first [2701—1870] officer?

A. What suggestion do you refer to?

Q. Have I referred to but one suggestion?

A. Yes, you have.

Q. Then the suggestion that you made that the "Arcona" steam ahead.

A. That suggestion was made after the lights were fired.

Q. That suggestion was made after the lights

(Testimony of J. R. Macaulay.)

were fired? A. After the lights were fired.

Q. Oh, I see. Not before the lights were fired?

A. To the best of my knowledge and belief it was afterwards.

Q. Afterwards. All right. Now, then, if the lights were fired before you made this suggestion that the "Arcona" steam ahead, will you kindly state how long before, as near as you now remember?

A. A short time.

Q. Before you made the suggestion that the "Arcona" steam ahead. A. What is that reference?

Q. How long before you made that suggestion was it that the lights were fired off as signals to the "Arcona"? A. A very few minutes.

Q. A few minutes? A. A few minutes.

Q. When you say a few minutes, do you mean as little as five minutes?

A. No, I wouldn't confine myself to five minutes.

Q. All right. Do you mean, Captain Macaulay, that it could be as much as twenty minutes before that suggestion was made? A. Less.

Q. Would it be as much as fifteen minutes before that suggestion was made? A. Less.

Q. Would it be as much as ten minutes?

A. It might be.

Q. About ten minutes?

A. Might be, more or less.

Q. Is ten minutes about the best of your recollection? [2702—1871]

A. I wouldn't like to confine myself to any minutes at all.

(Testimony of J. R. Macaulay.)

Q. What is your best judgment on that?

A. I would say a few minutes. I wouldn't confine myself to any number because if I did I would be testifying to something that I couldn't prove.

Q. You said it was less than twenty?

A. I did and I believe so still.

Q. And you believe it was less than fifteen?

A. I believe so still.

Q. Do you mean, then, it was less than ten?

A. That's coming pretty close to the mark.

Q. Was it less than fifteen?

A. Well, that is the same question.

Q. I want to find out.

A. You can't find out from me because I can't tell.

Q. And you said that it was probably more than five, did you not? A. I did.

Q. Now, Captain Macaulay, would you say that the floating, the actual floating of the "Celtic Chief" occurred, must have occurred between those two occasions, namely: the firing of those signal lights to the "Arcona" and this suggestion that you made that the "Arcona" steam ahead?

A. The floating of the "Celtic Chief" occurred about that time.

Q. About midway between those two occasions?

A. About that time.

Q. That's what you mean?

A. What two occasions do you refer to?

Q. The firing of the signals and the suggestion made by you that the "Arcona" steam ahead?

A. Yes, the floating did occur about that time.

(Testimony of J. R. Macaulay.)

Q. About midway between those two occasions?

A. About that.

Q. So that the firing of the signal lights occurred before the "Arcona" was floated. [2703—1872]

Mr. WARREN.—I object to the question as asked and answered.

The COURT.—I allow the question.

Q. Answer the question.

A. What is the question?

Q. So that the signal lights to the "Arcona" were fired before the actual flotation of the "Celtic Chief."

Mr. WARREN.—There's another thing I object to and that is the question being repeated when it is in the record and the Reporter could read it.

The WITNESS.—Am I allowed to answer the question?

The COURT.—Yes.

A. When those signal lights were fired, the "Celtic Chief" had considerable sternway at that time.

Q. But as far as you know was not actually afloat yet.

A. Well, if she had sternway she must have been afloat. Probably her fore-end would be touching the bottom but the rising tide at that time and the motion of the ship would cause me to believe that the ship was afloat.

Q. Then, Captain Macaulay, you having testified that it was about a half an hour from the time the "Celtic Chief" first began to move, according to your observation, until she came off and it was about

(Testimony of J. R. Macaulay.)

five minutes after you first noticed her final motion that the German cruiser officers came on board the "Celtic Chief" and on to the poop, then it is true, is it not, Captain Macaulay, that for about twenty-five minutes the German cruiser officers were on the poop and in your immediate vicinity and yet during the whole of those twenty-five minutes you never made a suggestion to that or any of them that the "Arcona" might begin to pull or that she steam forward?

Mr. WARREN.—I have to object to that question, first, that it has been asked and answered several times; second, that it contains a misstatement of the testimony of the witness.

Mr. OLSON.—I say at least twenty-five minutes. If that's not in my question I so qualify it.

The COURT.—I allow the question. [2704—1873]

Q. Answer the question.

A. What is the question?

(Question read.)

A. It is not true.

Q. Well, if you didn't make that suggestion until the ship was afloat how could you make it otherwise?

A. What's that?

Q. If you didn't make that suggestion until the "Celtic Chief" was already afloat, how were you able to make it otherwise?

A. When the "Celtic Chief" was afloat approaching the "Arcona" I advised the executive officer to steam ahead and his reply to me was, "We can't steam ahead; we are afraid that the lines will get in

(Testimony of J. R. Macaulay.)

our propellers." Then I suggested again that he heave away on his chain cable which they did.

Q. You've answered that several times. That is in the record several times. I didn't have to have it repeated. The point that I am after, Captain Macaulay, is this, that for twenty-five minutes, at least, after those officers came on the poop, the "Celtic Chief" was moving seaward but was not yet afloat, and during the whole of those twenty-five minutes before she was actually afloat you didn't once suggest to them or to any of them or advise them or any of them that the "Arcona" began to pull or steam ahead, before she was afloat. Isn't that the fact? A. It is not.

Q. All right. What is the fact in that respect?

A. The fact is that the German officers were not on board the "Celtic Chief" for the twenty-five minutes.

Q. They were not? A. No.

Q. How long after you first noticed that the "Celtic Chief" began to move seaward was it that they came on the poop? How long?

A. About five minutes or so or ten. Five or ten minutes. A short time after she started they were on the poop.

Q. How long was it after they came on the poop that the "Celtic [2705—1874] Chief" came off the reef?

A. About thirty-five minutes or half an hour or something like that.

Q. And during that thirty minutes or thirty-five minutes, you never once made the suggestion that you have mentioned?

A. I did make lots of suggestions.

(Testimony of J. R. Macaulay.)

Q. Did you make that suggestion that the "Arcona" steam ahead?

A. I made that suggestion. I asked the officer, "Why don't you steam ahead"? That was while we were coming astern.

Q. That was while you were coming astern?

A. I believe that *were* were afloat at that time.

Q. Now, I'm asking you whether you made that suggestion before she was afloat?

A. I forget making any such suggestion before she was afloat.

Q. If you don't now remember of having made any such suggestion before she was afloat and if she wasn't afloat until thirty or thirty-five minutes after the German officers came up on the poop, isn't it true that you didn't make any such suggestion during that thirty or thirty-five minutes?

A. No, it is not true.

Q. Well, did you make that suggestion before she was afloat?

A. They were not on her there before she was afloat. She had started when the officer came on board.

Q. She was afloat before they came on board?

A. I won't actually say.

Q. Did you say a few minutes ago that they came up on the poop about five or ten minutes after you first noticed her afloat? A. I say so still.

Q. And didn't you say it was about thirty or thirty-five minutes after that before she was actually afloat? A. About that time.

Q. During that thirty or thirty-five minutes, weren't the German cruiser officers on the poop?

(Testimony of J. R. Macaulay.)

A. The commander, the signal-man. The executive officer and the commander left. [2706—1875]

Q. Where did they go?

A. They went back to the ship.

Q. To the "Arcona"?

A. They went back to the "Arcona."

Q. Before the "Celtic Chief" was afloat?

A. About the time she floated.

Q. The signal-man had already given his signals?

A. He had fired his signals.

Q. About how long before that?

A. A very short time.

Q. Five or ten minutes, ten or fifteen?

A. Somewhere around there.

Q. Ten or fifteen?

A. Somewhere around there.

Q. So that the "Arcona" had been signaled to go ahead by these lights ten or fifteen minutes before she was afloat? A. Oh, no.

Q. Didn't you say that the signal-man was leaving at that time? A. It took him some time.

Q. I'm asking you about the time when she actually floated. Didn't you say that the signal-man was leaving about that time?

A. The vessel had not got sternway.

Q. Didn't you say that they left the "Celtic Chief" about the time that the "Celtic Chief" was first afloat? A. About that time.

Q. And it was ten or fifteen minutes before that time that the signals were fired? Didn't you so testify? Didn't you so testify?

Mr. WARREN.—Object to the question—already

(Testimony of J. R. Macaulay.)

asked and answered. I move to strike the second question.

Q. Are you yet ready to answer that question?

Mr. WARREN.—I have a motion before the Court. I would like to have a ruling.

The COURT.—I'll let the record stand just as it is.

Q. Answer the question, Captain.

A. What is the question?

(Question read.)

Q. That is, before the floating of the "Celtic Chief" when the [2707—1876] signal-man was leaving the "Celtic Chief."

A. The signals, to the best of my knowledge and belief, were fired shortly after the "Celtic Chief" had gotten sternway.

Q. And it took her half an hour, didn't it, or more, after she got sternway, before she was afloat—isn't that your testimony?

A. It took her, to the best of my knowledge and belief, over half an hour; about three-quarters of an hour before she was in deep water.

Q. Well, how long was it before she was actually afloat for the first time?

A. A very few minutes.

Q. Well, when you say a very few minutes—after she started going seaward? A. Yes.

Q. What do you mean by a very few minutes?

A. A very few number of minutes.

Q. What do you mean by a very few minutes? Twenty minutes, half an hour, forty-five minutes, an hour or two hours?

A. When I say minutes I mean less than an hour.

(Testimony of J. R. Macaulay.)

If it was an hour I would say about an hour. When I say minutes, I mean minutes.

Q. How much less than an hour before the "Celtic Chief" was actually afloat for the first time after she had a seaward motion?

A. A very few minutes.

Q. Now, let's see how many minutes you mean. Do you mean five minutes?

A. I believe that the "Celtic Chief" was actually afloat from ten to twenty minutes after she first started.

Q. And she first started, according to your observation, about five or ten minutes before the German cruiser officers came up on the poop?

A. To the best of my knowledge and belief she had started before the German officers came on board.

Q. Don't you know that to be the fact?

A. I didn't take note of the time they came on board.

Q. So they may have been aboard before she started to move [2708—1877] seaward?

A. I was standing on the poop, starboard side aft, and they would come aboard on the port side on the main deck. They may have been on the main deck for a few minutes. It takes some time to get to the poop, where I was placed, so they might have been on board a few minutes before I noticed.

Q. May they have been on the poop before you noticed that she was moving seaward?

A. They might have been on the poop. It is possible.

Q. It is possible. You would now remember,

(Testimony of J. R. Macaulay.)

wouldn't you, if they had been on the poop at that time?

A. Well, they might have been on the poop without my observing them.

Q. When did you observe them with reference to the time that the ship began to move seaward?

A. When they came over on the starboard side.

Q. Was that before or after the "Celtic Chief" began to move seaward?

A. She was at that time moving.

Q. Moving seaward? A. Yes.

Q. How long after she started moving seaward was it that you saw them for the first time on the poop?

Mr. WARREN.—I object to the question as asked and answered.

The COURT.—I allow the question.

Q. Answer the question, Captain.

A. When I first noticed them on the poop that is when the executive officer came over on the starboard side. That was shortly after the ship had actually started.

Q. When you say shortly, do you mean about five minutes? A. A few minutes.

Q. Do you mean about five minutes?

A. Well, I wouldn't confine myself to any number of minutes.

Q. May it have been as much as ten minutes?

A. It might have been.

Q. Might it have been as much as fifteen minutes?

[2709—1878]

A. No, I don't believe it was as much as fifteen minutes.

Q. All right. Now, then, weren't the signals fired

(Testimony of J. R. Macaulay.)

off immediately at that time?

A. The signal-man ran right up on top of the pilot-house and the officer addressed him in German and the signal-man fired those rockets immediately after the German officer had spoken to him.

Q. Was the signal-man already going up on the pilot-house at the time that you noticed the executive officer for the first time on the poop?

A. About that time.

Q. How long did it take him to go from the position where you first noticed the executive officer until he was up on the pilot-house?

A. Possibly two or three minutes.

Q. And he fired his signals off as soon as he got up there, did he?

A. No, he waited for the officer's orders.

Q. How soon did they come after he was on the pilot-house?

A. Almost directly after he got placed on the top of the pilot-house.

Q. So you would say that within two or three minutes after he was on the pilot-house he fired the signals? A. He did.

Q. Then, the signals were fired about ten minutes before the "Celtic Chief" first was afloat; is that not true? A. No, I can't say that it is.

Q. Well, were they fired before she was afloat for the first time?

Mr. WARREN.—Object to the question as asked and answered.

A. I understood that was your last question.

Q. No, I said about ten minutes before.

(Testimony of J. R. Macaulay.)

The COURT.—Objection overruled. Answer the question.

A. What is the question.

Q. The first question was, those signals were then, were they not, fired about ten minutes before the "Celtic Chief" [2710—1879] was first actually afloat. What was your answer to that?

Mr. OLSON.—Withdraw the question.

The COURT.—I'll hear the answer any way.

Mr. OLSON.—I submit it's a travesty on justice.

The COURT.—Repeat the last question, Mr. Soares.

Mr. WARREN.—I want to have that answer.

Mr. OLSON.—Then I ask to have the witness excluded from the courtroom.

The COURT.—I'm going to allow the question.

Mr. WARREN.—I'm entitled to know what is in the record.

The COURT.—Not in the middle of cross-examination.

Mr. WARREN.—Your Honor, I move that your Honor reconsider his last order.

Mr. OLSON.—Now, then, Captain Macaulay, will you kindly answer the question that the Reporter will now read to you, being my last question?

(Question read.)

Mr. WARREN.—Object to the question as asked and answered.

The COURT.—I allow the question.

Q. Answer the question, Captain.

A. The "Celtic Chief" at the time those rockets were fired had sternway on the ship and to the best of my knowledge and belief she was actually afloat.

(Testimony of J. R. Macaulay.)

Q. I see. How, then, Captain Macaulay, was it possible for the signal-man who fired those signals to have gotten down from the pilot-house down the side of the vessel so that he was leaving the vessel at the time that the "Celtic Chief" was first afloat?

Mr. WARREN.—I object to the question as an improper statement of the testimony.

The COURT.—I think that I should allow the question to the witness after having his mind brought down to certain different things.

Mr. WARREN.—If I could have a statement on the record, then, as to the idea of objections of this kind, could it [2711—1880] not be understood that my objection and the ruling will always be the same where it goes to what I consider improper statements of the testimony?

Q. Answer the question, Captain.

A. What was that last question?

(Question read.)

A. At that time the commander, after discovering that the ship was actually afloat, returned immediately with the signal-man in their own boat on board of the "Arcona."

Q. Didn't you testify, Captain Macaulay, that the signal-man was already leaving the "Arcona" at the time that the first, that the "Celtic Chief" first came afloat?

A. He left the "Arcona" directly after firing his rockets.

Q. And I'm asking you if you didn't testify that the signal-man was already leaving the "Celtic Chief" when the "Celtic Chief" first became afloat.

A. Well, he certainly wouldn't fire the signals be-

(Testimony of J. R. Macaulay.)

fore she was afloat.

Q. He wouldn't? Why not?

A. Because the instructions were to fire the first signal when the ship had a slow motion. The second instruction was to fire the second rocket when the ship had a rapid motion, and the third signal was to fire the third rocket or signal when the ship was actually afloat. Instead of those instructions he fired the whole business off in a bunch.

Q. Now, then, Captain Macaulay, answer my question. Did you not testify that the signal-man was already leaving the "Celtic Chief" when the "Celtic Chief" first became afloat? A. It was at that time.

Q. It was at that time that he was leaving?

A. At that time.

Q. Going over her side?

A. He went on top of the pilot-house and fired those rockets and went immediately into the boat and left the ship as soon as possible for the "Arcona."

Q. Answer my question. [2712—1881]

Mr. WARREN.—I submit the question is answered.

The COURT.—I rule it has not been answered.

Q. Answer my question, Captain Macaulay. Didn't you testify that the signal-man was actually leaving the "Celtic Chief" at the time that the "Celtic Chief" first became afloat?

A. About that time.

Q. Do you mean that he was already going over the side of the "Celtic Chief" at that time?

A. I mean that he went on the pilot-house and fired those rockets.

Q. I'm not asking you about that.

(Testimony of J. R. Macaulay.)

A. And then immediately went into his boat as soon as possible.

Q. I'm asking you about an entirely different thing. I'm asking you if you have not testified that the signal-man was already leaving the "Celtic Chief" at the time she first became afloat, and I understand you to say that it was about that time. Now, then, I'm asking you if he was already going over the side of the "Celtic Chief" when the "Celtic Chief" first became afloat?

A. No, I don't understand it that way.

Q. Well, how was it, then?

A. He went over the side immediately afterwards.

Q. After the "Celtic Chief" was afloat?

A. After the "Celtic Chief" was afloat.

Q. So that he and the commander, then, were getting into the boat? A. As soon as possible.

Q. Were getting to the boat? A. Yes.

Q. After the "Celtic Chief" had first become afloat?

Mr. WARREN.—Object to the question as asked and answered.

The COURT.—I'm not sure yet. I want to get the witness' definite statement. It's not quite certain to me. It may be certain to you. I allow the question.

A. What is the question?

(Question read.)

A. I say that the commander— [2713—1882]

The COURT.—In other words, Captain Macaulay, had the ship floated before they got into their boats to leave the ship? A. I believe she had.

(Testimony of J. R. Macaulay.)

Q. Did you see them going over the side of the boat, the "Celtic Chief," over the side of the "Celtic Chief"? A. I did not.

Q. Did you see the signal-man come down from the pilot-house preparatory to going over the side of the "Celtic Chief"? A. I did.

Q. You were looking forward at that time, then?

A. No, I was looking aft.

Q. How could you look aft and see him coming down from the pilot-house?

A. The pilot-house is about the middle of the poop.

Q. And it was there that he was coming down at that time?

A. Yes, he was coming down from the pilot-house.

Q. Were you forward of the pilot-house.

A. I was about the break of the poop at that time.

Q. Now, from that time when the commander and the signal-man left the poop to go over to the "Arcona," until the "Celtic Chief" was within fifty feet of the "Arcona," how much time had elapsed, approximately? A. A few minutes.

Q. How many minutes do you mean by a few minutes? More than ten or fifteen minutes? Would it be more than fifteen minutes? A. It might.

Q. Might it have been as much as twenty minutes?

A. It might be twenty minutes.

Q. Might it be twenty-five?

A. Well, I don't believe it would be as much as twenty-five minutes.

Q. But it might be as much as twenty?

A. It might be twenty, more or less.

Q. But do you think it was less than fifteen?

(Testimony of J. R. Macaulay.)

A. It didn't take a great many minutes for them to travel in their own boat from the "Celtic Chief" to the "Arcona."

Q. I'm asking how long it was after they went down the poop and got into their boat before the "Celtic Chief" had come within fifty feet of the "Arcona"?

A. It might have been in the neighborhood of fifteen minutes or so.

Q. Might it have been as much as twenty?

A. It might have been twenty.

Q. Might it have been twenty-five?

A. No, I don't think so.

Q. Do you think it was less than fifteen?

A. Well, it's a hard matter for me to—

Q. I want your best judgment.

A. —to say what time elapsed.

Q. I want your best judgment.

A. Well, I gave it to you as near as I can.

Q. Can't you state whether you think it is less than 100?

A. I gave you the number of minutes as well as I could.

Q. According to your best judgment, do you think it was less than fifteen minutes?

A. It might have been fifteen.

Q. Might it have been as little as ten?

Mr. WARREN.—I object to the question as asked and answered.

A. Well, it might have been twenty, it might have been ten or fifteen.

Q. I want your best judgment, Captain.

(Testimony of J. R. Macaulay.)

A. I'm giving my best judgment.

Q. According to your best judgment that is the nearest—you have undertaken to say within five minutes the time that elapsed between various events in a number of instances.

A. Yes, and I am ready and willing to tell as near as I can of all events that happened.

Q. Well, now, give us the nearest that you can come to.

A. Might have been fifteen or twenty minutes.
[2715—1884]

Q. That is about the time that you think it was?

A. It might have been more or less, a few minutes more or a few minutes less.

Q. I want to find out if it might have been as little as ten minutes.

A. I say about ten or fifteen minutes.

Q. Well, then, it might have been as little as ten minutes or it might have been a little more than twenty minutes? A. It might.

Q. That's as near as you can come to it?

A. That's as near as I can come to it.

Q. The "Mikahala," the "Helene," and the "Like-like" were all pulling seaward, were they not, as hard as they could, when the "Celtic Chief" was coming off? A. They were supposed to.

Q. Haven't you so testified?

A. To the best of my knowledge they were.

Q. Didn't they have a powerful strain on all their lines? A. They did.

Q. And you mean to say with those three vessels pulling seaward that it took as much as twenty min-

(Testimony of J. R. Macaulay.)

utes for the "Celtic Chief" to be taken from the point where she was to the "Arcona," a distance of more than five or six hundred feet?

A. The "Arcona" wasn't standing at that time; she was already moving seaward when the "Celtic Chief" came within fifty feet of her. She was heaving on her chain cable.

Q. Was she moving seaward? A. Yes, *is* was.

Q. How long had she been moving seaward at that time?

A. Shortly after the ship, the "Celtic Chief," started I asked the executive officer why didn't he steam ahead; he said he couldn't steam ahead on account of being afraid of getting the line in his propeller. "Well, heave away on your chain cable." And they hove away on it. [2716—1885]

Q. What was the effect of that upon the "Arcona"? A. She started ahead.

Q. She started ahead? A. Sure!

Q. Did her propellers begin to move? A. No.

Q. How far did she travel heaving in on her anchor-chain?

A. She kept heaving on her anchor-chain until she got to her anchor.

Q. That was two hundred or three hundred feet forward?

A. I don't know how much she had out.

Q. Do you think she had as much as a thousand feet out? A. I don't know.

Q. She might have had that much as far as you know? A. For all I know, she might.

Q. You saw the place where the anchor of the

(Testimony of J. R. Macaulay.)

"Arcona" was dropped? A. I saw the splash.

Q. Was that as much as a thousand feet ahead of the "Arcona" where her position was when she finally got into position?

A. It was considerable distance. I didn't take any particular notice of the distance in feet.

Q. No? You testified that it was about four hundred feet, as near as you could judge, ahead of the "Mikahala's" bow?

A. Yes, from the "Mikahala."

Q. And haven't you testified that the "Arcona" was lying at least, after she became attached to the "Celtic Chief," somewhat ahead of the "Mikahala"?

A. She was.

Q. How, then, could she have more than four hundred feet of chain out?

A. I didn't measure the distance.

Q. You say the anchor was laid about four hundred feet ahead of the bow of the "Mikahala"?

A. I told you that the best of my recollection was that the anchor was lying ahead of the "Mikahala" and a little to the seaward. [2717—1886]

Q. About four hundred feet ahead of it, didn't you say, according to your best judgment? Isn't that what you said?

A. I do believe that she did have four hundred feet of chain cable.

Q. Did she have more than that?

A. She might have a little more.

Q. As much as a thousand feet?

A. I'm not prepared to say.

Q. And yet you still say, do you, that her anchor

(Testimony of J. R. Macaulay.)

was laid about four hundred feet ahead of the "Mikahala"?

A. I'm prepared to say that her anchor was laid ahead of the "Mikahala," a little to the seaward.

Q. Didn't you testify that it was about four hundred feet ahead of the "Mikahala," according to your best judgment?

A. I might have so testified.

Q. Well, don't you know?

A. I forget a great many of the questions was asked me.

Q. Don't you know that it was ahead about four hundred feet?

A. In fact, I remember very few of them.

Q. Don't you know that the anchor of the "Arcona" was laid about four hundred feet ahead of the "Mikahala"?

A. I know that the anchor was laid ahead of the "Mikahala," a little to the southward and seaward of the "Mikahala."

Q. If you testified that the "Arcona" anchor, according to your best judgment, was ahead about four hundred feet, of the bow of the "Mikahala," that would be true?

A. If I had so testified it would be true.

Q. Now then, Captain—

A. That is, to the best of my knowledge and belief.

Q. Well, you have so testified and if that is true, Captain, the "Arcona" couldn't have travelled more than a couple of hundred feet before she was up to her anchor, could she?

A. If she had four hundred feet of chain she would have to [2718—1887] travel that distance before she came to her anchor.

(Testimony of J. R. Macaulay.)

Q. Wasn't she lying ahead of the "Mikahala" in the position she was attached to the "Celtic Chief"?

A. The fact of her lying ahead or astern of the "Mikahala" had nothing to do with it.

Q. I'm asking you wasn't she lying with her bow considerably ahead of the bow of the "Mikahala"?

A. I believe she was.

Q. I believe you said that it was possible that her stern was, if not wholly at least almost, in line with the bow of the "Mikahala"?

A. I don't remember testifying to that effect.

Q. If you said her stern was at least abreast of her beam—

A. Now, you're getting a little closer to the facts.

Q. Is that so?

A. I believe that's a little closer.

Q. Was her stern abreast of the "Mikahala's" stern? A. No, it was not.

Q. Was it forward of the "Mikahala's" stern?

A. It was.

Q. Was it as far forward as the beam of the "Mikahala"? A. It may have been.

Q. Well, don't you know?

Mr. WARREN.—Now, I submit, your Honor, this thing has been gone into.

Q. Now, then, if the "Arcona" was lying with her stern abreast of the beam of the "Mikahala," doesn't that indicate how much—

The COURT.—I allow the question.

Q. Answer the question, Captain.

A. As near as I can recollect, the stern of the "Arcona" was to the westward of the "Mikahala" and

(Testimony of J. R. Macaulay.)

might have been a little forward of her beam.

Q. Do you mean the stern of the "Arcona" might have been a little forward of the beam of the "Mikahala"? [2719—1888] A. I do.

Q. That is according to your best judgment and recollection now? A. At this time.

Q. If the "Mikahala's" anchor was laid four hundred feet ahead of the bow of the "Mikahala," doesn't it follow that by the time that the "Arcona" had travelled so far that her bow was alongside of the anchor, the "Arcona" hadn't travelled more than a couple of hundred feet? A. No.

Q. Well, how far had she travelled at that time?

A. The length of her chain cable.

Q. How much was that?

A. I don't know exactly.

Q. If you have testified that the anchor was laid four hundred feet ahead of the "Arcona" and the bow of the "Arcona" was lying ahead of the bow of the "Mikahala," doesn't it follow that the "Arcona" hadn't travelled more than a couple of hundred feet?

A. I don't believe it's on record that I gave any exact distance of chains or cables or hawsers or any other line that was connected with the "Celtic Chief."

Q. And you don't believe that you said it was about four hundred feet ahead of the bow of the "Mikahala" that the "Arcona" dropped her anchor?

A. I have no recollection of giving any exact distance of lines, cables, hawsers, or any lines connected with the "Celtic Chief" to any of the vessels.

Q. Please answer my question. Do you say that you don't think that you ever testified that the anchor

(Testimony of J. R. Macaulay.)

of the "Arcona" was laid about four hundred feet ahead of the bow of the "Mikahala"?

A. I do remember testifying to what I supposed the length of chain cable was.

Q. And how much was it that you supposed it was?

A. It might have been four hundred feet.

Q. Don't you know that?

A. It might have been more. It might have been less.

Q. It might have been less than four hundred feet?

A. Might. [2720—1889]

Q. How much less? A. I don't know.

Q. You don't know? A. No.

Q. Now, then, Captain, try to refresh your memory and kindly state what your judgment now is as to the approximate distance ahead of the bow of the "Mikahala" that that anchor was dropped.

A. Have I testified that it was four hundred feet according to my judgment from the bow of the "Arcona" to her anchor?

Q. That was not your testimony and I have not so stated. I have asked you if you say you don't think that you testified that the "Arcona" dropped her anchor four hundred feet ahead of the bow of the "Mikahala."

A. It's an utter impossibility for me to remember the questions that has been put to me in this Court.

Q. How far ahead of the "Mikahala" was it then, according to your best recollection and judgment, that the anchor of the "Arcona" was dropped? How far ahead of the "Mikahala's" bow?

A. If you noticed that diagram that I drew at that

(Testimony of J. R. Macaulay.)

particular time it will give us approximately the distance from the "Mikahala."

Q. Didn't you testify that that diagram was not drawn according to scale? A. I did so testify.

Q. I want your present judgment and recollection.

A. It will give us a fair idea of the distance from that anchor to the "Arcona" and I have a right, I think, to take that diagram as being true to the best of my knowledge and belief.

Q. I want you to testify now independently how far, according to your present judgment and recollection, the "Arcona's" anchor was laid ahead of the bow of the "Mikahala." Now, kindly answer the question without any further evasion.

A. To the best of my judgment and belief it must have been about four hundred feet or so from the anchor to the bow of the "Arcona."

Q. How much from the anchor where it was dropped off the "Arcona" in this second position to the bow of the "Mikahala"? [2721—1890]

A. Less than four hundred feet.

Q. How much less than four hundred feet do you think?

A. Might have been a hundred feet less.

Q. So you think it was about three hundred feet ahead of the bow of the "Mikahala" that the "Arcona" dropped her anchor the second time?

A. That may be so.

Q. That's your present judgment and recollection?

A. That is my present judgment.

Q. And you say you were standing on the poop deck of the "Celtic Chief" and looking over the bow

(Testimony of J. R. Macaulay.)

of the "Mikahala," you were able to see the splash from that anchor not more than three hundred feet ahead of the "Mikahala," the "Mikahala" standing eight or nine feet out of the water and you standing on the poop deck about nineteen feet above the water line? A. More than nineteen feet.

Q. How much more? A. Six.

Q. Twenty-five feet? A. Yes.

Q. Twenty-five feet above the water line?

A. Yes.

Q. Didn't you testify that you were standing about nineteen feet?

A. Not on the deck. I testified the deck was nineteen feet.

Q. And you still maintain that standing twenty-five feet above the water line, you were able to look over the "Mikahala" and see that splash of water not more than three hundred feet ahead of the "Mikahala"? A. Yes.

Q. Now, then, you say that your present judgment is that the "Arcona's" bow was about four hundred feet from its anchor as laid? A. About that.

Q. How do you explain that she could have that much chain out if its bow was lying ahead of the bow of the "Mikahala" and yet that anchor was not more than three hundred feet from the *the* bow of the "Mikahala?" Kindly explain that, if you can. [2722—1891]

A. The height from the surface of the sea to where I stood was about nineteen feet out of the water.

Q. So it was twenty-five feet?

A. I'm answering your question.

Q. All right, go on.

(Testimony of J. R. Macaulay.)

A. The length of my body is about six feet.

Q. Oh! A. Oh!

Q. It was down on the deck, then, that it was nineteen feet above the water line?

A. I told you from the deck where I was standing to the water's edge was nineteen feet. I didn't necessarily come down there to that height to look at that anchor. I was standing on my legs.

Q. Now, I asked you, Captain, if you didn't testify that the place where you were standing was nineteen feet above the water line and I understood you to say just a few minutes ago that it was six feet more than that. Now, did you mean that your eyes were on a plane six feet above the deck on which you were standing when you said that?

A. I said that the place where I was standing was nineteen feet about above the water's edge, which I say now. We take my height into consideration. From where I could see that line will make, that was six feet additional.

Q. And that's what you mean when you said six feet additional sometime ago?

A. That's what I meant, taking my own height into consideration.

Q. You don't mean that the deck of the poop was twenty-five feet above the water line?

A. No, I don't.

Mr. WARREN.—Object to that question as asked and answered. I move to strike.

The COURT.—It will not be stricken.

Q. Now, then, Captain Macaulay, answer the question which I asked you a few moments ago. How

(Testimony of J. R. Macaulay.)

do you explain that there could be four hundred feet of chain from the "Arcona's" bow to its anchor where it laid in the second position if the "Arcona" was [2723—1892] not more than three hundred feet from the "Mikahala's" bow and yet the "Arcona's" bow was lying considerably ahead of the bow of the "Mikahala"? Kindly explain that, if you can.

A. The distance of the anchor from the bow of the "Mikahala"—I refer to the "Arcona's" anchor—the distance from the anchor to the "Mikahala's" bow, I testified to the best of my knowledge and belief, was less than the distance from that anchor to the "Arcona's" bow.

Q. How much less?

A. Might have been a hundred feet less, might have been more. Might have been less than that but I should say about a hundred feet. And when she dropped her anchor, the "Arcona" I mean, dropped her anchor in that position, I testified that I could see the splash from the poop deck of the "Celtic Chief."

Q. Yes. A. A little over the "Mikahala's" bow.

Q. Yes.

A. As near as I can remember, the height of the "Mikahala's" bow at that particular time, I believe, was in the vicinity of ten feet above the sea.

Q. I see.

A. I was standing on the poop deck of the "Celtic Chief," nineteen feet about, above the level of the sea.

Q. Yes.

A. My own height added to that nineteen feet

(Testimony of J. R. Macaulay.)

would make about twenty-five feet.

Q. Yes.

A. From that angle where I was standing to the angle of the bow of the "Mikahala" on that line it would be possible from where I stood.

Q. Is that your full answer?

A. That is my answer.

Q. Now, then, kindly answer the question that I asked of you, explain that if the "Arcona's" anchor was dropped about three hundred feet ahead of the "Mikahala's" bow and there was, in your judgment, four hundred feet of chain from the anchor to the "Arcona's" bow, how do you explain that if the "Mikahala's" bow was only three hundred feet from the anchor of the "Arcona" and the "Mikahala's" bow [2724—1893] was nearer to the "Celtic Chief" than the bow of the "Arcona"—that is to say, the "Arcona's" bow was farther seaward than the bow of the "Mikahala"? How do you explain that there could be four hundred feet of chain from the "Arcona's" bow to that anchor?

A. I don't know the exact length of the chain from the "Arcona's" bow to the anchor but to the best of my knowledge and belief there must have been about four hundred feet. That's approximately.

Q. You remember testifying, do you not, that the "Mikahala" was about one hundred and fifty feet in length or possibly more?

A. I have no personal knowledge of the length of the "Mikahala."

Q. Isn't that about it?

A. One hundred and fifty?

(Testimony of J. R. Macaulay.)

Q. One hundred and fifty feet?

A. She might be more.

Q. Do you think she is a little bit more?

A. She may be.

Q. Well, don't you think so? A. I do.

Q. How much more?

A. Well, she might be twenty-five or fifty feet more.

Q. Somewhere between one hundred and fifty and two hundred and fifty feet in length?

A. Yes, somewhere around there.

Q. Was the "Arcona" longer than the "Mikahala"? A. She was.

Q. How much longer, do you think?

A. I have no idea.

Q. Fifty or sixty feet or a hundred?

A. She might have been a hundred.

Q. Do you think she was? A. Yes, I do.

Q. So that the "Arcona" was probably about 250 or 275 feet in length?

A. Oh, she must have been more.

Q. About 300 feet, do you think? A. Yes.

Q. Now, then, if she was about 300 feet in length and her stern [2725—1894] was about abreast of the beam of the "Mikahala," her bow would be over two hundred feet or about two hundred feet ahead of the bow of the "Mikahala," would it not?

A. It would.

Q. Now, then, how can you explain that in your judgment there was four hundred feet of chain from the bow of the "Arcona" to the anchor, if that anchor was not farther ahead than a hundred feet, that is,

(Testimony of J. R. Macaulay.)

farther ahead of the bow of the "Arcona" than a hundred feet?

A. I don't understand your question at all.

Q. If the anchor of the "Arcona" was three hundred feet ahead of the bow of the "Mikahala" and the bow of the "Arcona" was two hundred feet ahead of the bow of the "Mikahala," doesn't it follow that the anchor of the "Arcona" was only about a hundred feet ahead of the bow of the "Arcona"?

A. If the anchor of the "Arcona" was two hundred feet—

Q. Say three hundred feet ahead of the bow of the "Mikahala." A. Three hundred.

Q. Yes, and the bow of the "Arcona" was about two hundred feet ahead of the bow of the "Mikahala," doesn't it follow that the anchor of the "Arcona" would only be about a hundred feet from the bow of the "Arcona"?

Mr. WARREN.—I object to the question as unintelligible.

A. I don't understand it all.

Q. If, Captain, the "Mikahala" is lying to the westward or to the eastward—I should say if the "Arcona," not the "Mikahala," lying to the eastward—

A. Which is the bow or the stern of those vessels?

Q. If the anchor of the "Arcona" was laid three hundred feet ahead of the bow of the "Mikahala" and the bow of the "Arcona" is two hundred feet ahead of the bow of the "Mikahala," how do you make out that there was four hundred feet of chain from that anchor, the anchor of the "Arcona," to the

(Testimony of J. R. Macaulay.)

bow of the "Arcona"?

A. You've made a mistake about that chain-cable on the "Mikahala" first, I can say. [2726—1895]

Q. All right, what is the mistake?

A. I stated that I thought that there was three hundred feet of chain attached to the "Mikahala's" anchor or thereabouts.

Q. That's what you stated, was it?

A. Well, about that. Three hundred feet from the bow of the "Mikahala" to that anchor.

Q. To whose anchor? A. "Arcona's" anchor.

Q. Yes, that's right; that's what you testified.

A. Now, then, the "Arcona's" anchor was off in a southeasterly direction about four hundred feet, to the best of my knowledge and belief, so that would bring the "Arcona" anchor to the southward and a little to the eastward of the "Mikahala's" anchor.

Q. Was it so far, as a matter of fact, to eastward that it was lying almost at right angles to the bow of the "Arcona"?

A. It was, as near as I could judge from my situation. It was laying at an angle of at least twenty-two degrees, on the port side of the "Arcona."

Q. How many degrees?

A. About twenty-two or thereabouts. It might have been more.

Q. Then it would not be at right angles?

A. Not exactly.

Q. Do you know that an angle at right angles is ninety degrees? A. I do.

Q. Now, then, if it was lying at an angle at twenty-two degrees, it was not lying near one-fourth of right

(Testimony of J. R. Macaulay.)

angles. It was less than one-fourth of a right angle?

A. Less than a quarter.

Q. Less than a quarter of a right angle?

A. Yes.

Q. Then the anchor was not lying anywhere near right angles?

A. The both anchors were not lying the same.

Q. We are talking only about one anchor and that is the anchor of the "Arcona," and I'm asking you if that was lying almost at [2727—1896] right angles to the bow of the "Arcona"?

A. The "Arcona" anchor was laid with a bearing on her port bow, I should say, at least 22 degrees on her port bow, that is, in the direction to the southward and eastward away ahead and a little to the eastward of the "Mikahala."

Q. Now, then, Captain Macaulay, if that is so, will you kindly explain how that anchor could be only three hundred feet ahead of the bow of the "Mikahala" if the bow of the "Arcona" was about two hundred feet ahead of the bow of the "Mikahala"? Wouldn't it follow that the anchor was only two hundred feet ahead, that is, 200 feet eastward of the position of the bow of the "Arcona"?

A. It would be more than that.

Q. How much more?

A. The anchor of the "Mikahala" was somewhere in the neighborhood of three hundred feet or so to eastward of the "Mikahala."

Q. How far eastward was the anchor of the "Arcona"? How far eastward of the bow of the "Mikahala" was the anchor of the "Arcona"?

(Testimony of J. R. Macaulay.)

A. A very short distance further than the anchor of the "Mikahala."

Q. How much farther, do you think?

A. Well, I should say a hundred feet or so more or less.

Q. Well, then, it was more than three hundred feet eastward of the bow of the "Mikahala," wasn't it?

A. Yes, I believe that is so.

Q. Why, then, did you testify that in your opinion it was about 300 feet away from the bow of the "Mikahala"?

A. Well, I so testify still, about.

Q. And when you say about you mean within a hundred feet?

A. I mean it is impossible for me to tell you.

Q. Was it a distance of fifty or sixty feet away, a thousand feet away? A. That's absurd.

Q. When you said that the "Celtic Chief" moved in there between Tuesday morning and Wednesday morning about six feet, were you speaking in terms similar to that now used? Possibly fifty or sixty feet or a hundred feet? [2728—1897]

A. When I stated that the "Celtic Chief" had moved in six feet I had marks and bearings and I measured the distance pretty near. What was the right thing?

Q. It was about six feet? A. It was six feet.

Q. Exactly? A. Or thereabouts.

Q. Or thereabouts?

A. Yes. Now, we'll come down to knowledge. It was within a few inches one way or the other.

(Testimony of J. R. Macaulay.)

Q. And when you used the word "thereabouts" sometimes you mean a difference of fifty or sixty or a hundred feet and sometimes a few inches?

A. Circumstances alter cases in this as they do in anything else.

Q. Now, then, Captain Macaulay, let's direct our attention to this six feet. Will you state what bearings you had that you were able to determine this variation from? A. Yes.

Q. What were they?

A. They were lights in the channel leading to Honolulu harbor.

Q. Lights? How many lights?

A. There's quite a number of lights.

Q. All right, what were the lights that you used as your ranges? A. The channel beacon lights.

Q. How many were there?

A. There is a half a dozen.

Q. You used a half a dozen?

A. No, I only used two.

Q. Two? A. Yes.

Q. Which two were they?

A. They were the two outer lights and also a light at Waikiki.

Q. I see. How far was the first light away from the "Celtic Chief"?

A. About a quarter of a mile.

Q. How far was the second light away from the "Celtic Chief"?

A. Four hundred feet from the first light.

Q. How far was the light at Waikiki from the "Celtic Chief"? A. About three or four miles.

(Testimony of J. R. Macaulay.)

Q. I see. Now, then, Captain Macaulay, you mean to tell the Court, do you, that you could determine a variation of six feet [2729—1898] with three lights, one of them a quarter of a mile from the "Celtic Chief," the other four hundred feet, away and the third three or four miles away. A. I did.

Q. You think that's within the range of possibility, do you? A. I do.

Q. Just as you thought it was within the range of possibility that you could estimate or you could measure six feet by means of your dividers on that chart?

A. The chart had nothing to do with that.

Q. Didn't you think the ——— had taken a certain position? A. I did.

Q. And didn't you say you were able to estimate the distance by means of a chart and dividers?

A. I did not.

Q. You didn't mean to so testify?

A. I didn't so testify.

Q. You didn't mean to so testify?

Mr. WARREN.—I object to that, your Honor; asked and answered.

Mr. OLSON.—Withdraw the question. Didn't you tell the Court, Captain Macaulay, that you would be able to calculate the distance between the two points indicating the positions of the "Celtic Chief" respectively on Tuesday morning and Wednesday morning by other observations you had made on the chart, putting them on the scale of miles?

A. I did, with compass bearings.

Q. You testified that you could calculate the distance she had travelled? A. By compass bearings.

(Testimony of J. R. Macaulay.)

Q. Did you mean the Court to believe that you could estimate in that way that she had travelled six feet inshore. A. By that method.

Q. Yes.

A. No, I don't so understand. It was different bearings.

Q. Didn't you take those compass bearings on Tuesday morning? [2730—1899]

A. By the compass, yes.

Q. Didn't you use Diamond Head lighthouse as your object point? A. I didn't.

Q. And didn't you believe that there was a variation between the two.

Mr. WARREN.—If this is material, if the Court please—

The COURT.—The objection is overruled.

Q. Now I restate the question.

Mr. WARREN.—I object to the question being restated.

Mr. OLSON.—I've withdrawn it. Captain Macaulay, didn't you say that having taken your compass observation on Tuesday morning and Wednesday morning that you found that the two varied, that they were different? Didn't you so testify?

A. I testified that there was a difference, I believe.

Q. Now, then, Captain, if that is so, didn't you also testify that you could chart those observations on the ship's map and that you did so? Didn't you so testify? A. I did not.

Mr. WARREN.—Object to the question on the ground that it is not proper cross-examination and

(Testimony of J. R. Macaulay.)

nothing on direct on which to base it.

Q. Didn't you say, Captain Macaulay, that by plotting those two observations on the chart that you could by means of a chart and the dividers, putting the points of the dividers on the two points plotted on the chart, transfer the dividers so separated to the scale and thus determine the difference in feet between those two points?

Mr. WARREN.—I object to that question, your Honor, on the ground that it isn't proper cross-examination.

The COURT.—I allow the question.

Q. Answer the question, Captain.

A. What is the question?

(Question read.)

Mr. WARREN.—Those two points related to the two different compass points? [2731—1900]

The COURT.—Any two points.

A. No, I did not so testify as to feet.

Q. You did not.

Q. How much of an examination did you give to this wire line that was attached to the Miller anchor, the main wire line?

A. Ordinary, just the same as I did give to all the others.

Q. Now, then, you might be—you didn't give it any less examination, did you, than the examination of the wire that was first used by the "Arcona"?

A. Well, a brand new doesn't require such close examination as an old wire.

Q. Was the Miller wire an old or a brand new?

A. The wire was second-hand.

(Testimony of J. R. Macaulay.)

Q. It was an old wire? A. Old wire.

Q. Then you examined it, I assume, more than you did the "Arcona's" wire? A. No, just the same.

Q. Now, then, is it possible that you are equally mistaken concerning your examination of the Miller wire as you are about the size of it?

A. No, I am not mistaken.

Q. You are right about both of them?

A. I think so.

Q. So that if Captain Miller has testified that that was a two and one-quarter, you nevertheless adhere to your belief that it was a four-inch diameter wire?

A. It looked that to me.

Q. And if, as a matter of fact, it is testified in this case that the wire line used by the "Arcona," supplied by the "Arcona" herself, was in good condition, do you still adhere to your position that it was not?

A. From actual observation of that wire of the "Arcona," I could say it was a very rusty wire, but its condition as to tensile strength, that I have no knowledge of.

Q. You don't know whether it was as strong as the other wire or not, the other wire furnished by the "Celtic Chief"?

A. I know it was not. [2732—1901]

A. I know it was not as strong as the wire furnished by the "Celtic Chief."

Q. How do you know that if you do not know its tensile strength?

A. I have an idea of the tensile strength of a wire according to its diameter.

Q. What is your idea of the tensile strength of the

(Testimony of J. R. Macaulay.)

wire that was furnished by the "Celtic Chief" to the "Arcona"?

A. Which do you refer to, a working strain or a breaking strain?

Q. Which do you know? A. Either.

Q. All right; how much would be the breaking strain of the wire furnished by the "Celtic Chief" to the "Arcona"?

A. Will you permit me to use tables?

Q. I'm asking first what your idea is?

A. I believe that that wire furnished the "Arcona" by the "Celtic Chief" would break at a strain of about thirty tons.

Q. Thirty tons? A. About that.

Q. Now, what is the breaking strain of the wire, the other wire used by the "Arcona," according to your idea?

A. The breaking strain of that wire would be in the neighborhood of about fourteen tons.

Q. Fourteen tons? A. About that.

Q. Why so much difference between the two?

A. The difference in their diameter.

Q. How much was the difference in diameter between those two wires? A. About one inch.

Q. How much was the line furnished by the "Celtic Chief" in diameter?

A. Might have been one and three-quarters or two inches.

Q. One and three-quarters or two inches?

A. I didn't measure it.

Q. What, in your judgment, was the diameter of the other line, the line belonging to the "Arcona," used by her? A. About one inch or so.

(Testimony of J. R. Macaulay.)

Q. Then your judgment is that the other is a two-inch? [2733—1902]

A. One and three-quarters might possibly be all.

Q. Why didn't you say, then, that the difference in diameter was three-quarters of an inch instead of an inch?

Mr. WARREN.—He said about one inch.

A. I didn't say three-quarters of an inch; I said one and three-quarters of an inch.

Q. Didn't you say that you thought that the wire furnished by the "Celtic Chief" was an inch greater in diameter than the other one? A. Yes.

Q. If the other one was an inch and the "Celtic Chief" one was one and three-quarters, there was not a difference of an inch between the two?

A. I didn't measure those wires exactly.

Q. There wouldn't be an inch difference?

A. No.

Q. Only three-quarters of an inch?

A. About that.

Q. Is that what you think it was?

A. Somewhere about that.

Q. Now, then, did you observe them pretty carefully?

A. No, just casually. Looked at them casually like I did with all the other lines.

Q. But closely enough so you are pretty sure there was a difference between them?

A. There was that difference, I believe.

Q. If the testimony is that they were both one and one-quarter inch in diameter lines, what have you

(Testimony of J. R. Macaulay.)

got to say about that as to its truth or untruth?

A. If the lines were measured and found to be of that diameter I would naturally suppose that that was the exact diameter of each line.

Q. That is, in other words, if they were an inch and a quarter each, they were an inch and a quarter. That's what you mean to say? '

A. That is what I mean to say.

Q. That you regard as an answer to my question?
[2734—1903]

A. I think that is an answer to your question.

Q. And when you answer to the question that you are prepared to say that the testimony is not true if there is testimony in this case that those wires were both of the same size, each an inch and a quarter in diameter, are you prepared to say that that's incorrect? A. No, I am not.

Q. So you might be mistaken in thinking one was larger than the other?

A. It looked that way to me.

Q. I'm asking whether you might be mistaken?

A. I might be.

Q. Do you think if you had given them careful observation that you could have mistaken that three-quarters of an inch?

A. Mostly any man is liable to make a mistake of three-quarters of an inch in giving the size of a wire or any rope.

Q. Now, Captain Macaulay, did you observe that wire its whole length, the wire belonging to the "Arcona," that was used by her?

A. No, that was impossible for me to do.

(Testimony of J. R. Macaulay.)

Q. What part of it did you examine?

A. The part along the poop deck of the "Celtic Chief" more particularly than any other part.

Q. There was a part on the poop deck, was there?

A. Along over the poop deck of the "Celtic Chief" and where it was made fast and along towards the "Arcona." When it was out of the water after that I couldn't see no more of it.

Q. Did you say that a part of that line was on the poop deck? A. No.

Q. It was not, was it?

A. I observed it from the poop deck.

Q. Captain Macaulay, do you remember having some words with Captain Miller of hearing a conversation between Captain Miller and Captain Henry on Monday, the first day after the going aground of the "Celtic Chief"?

A. No, I didn't hear any conversation between Captain Henry and Captain Miller.

Q. Did you take part in any conversation with Captain Miller on [2735—1904] that day?

A. I don't remember ever taking any part in any conversation with Captain Miller.

Q. You know, do you not, that Captain Miller came out that day? A. He did.

Q. And you know he brought lighters out?

A. He did.

Q. But you didn't hear any conversation at all between him and Captain Henry that day?

A. No, I did not.

Q. Did you talk to Captain Henry at all that day?

A. I believe I did.

(Testimony of J. R. Macaulay.)

Q. You did? A. I believe so.

Q. Well, did he say anything to you about placing an anchor out to hold the "Celtic Chief" in position?

A. I don't recollect.

Q. Would you have remembered it if he had said anything of the kind?

A. Well, I might and I might not.

Q. Didn't you tell Mr. Warren on direct that neither was there any such conversation, and also, and if there had been such a conversation, you would have remembered?

A. I don't remember of any such conversation.

Q. And you would have remembered it pretty well if he had?

A. There's lots of things there, Mr. Olson, that did occur that at this time I can't remember. It might come to my memory later on but at the present time I don't remember of any conversation about an anchor on that particular day between Captain Henry and Captain Miller.

Q. Did you hear any conversation between Captain Henry and Captain Miller on Tuesday concerning an anchor? A. Yes, I believe I did.

Q. What time of the day?

A. Well, now, I can't remember the time of day but I recollect something about Captain Miller when he did come on board, when he returned to the ship Captain Henry asked him the question, "Why didn't you return? What was your delay?" and his excuse was that he had been trying to [2736—1905] get this anchor of his from somewhere around about the railroad and carry it over to the wharf and when he

(Testimony of J. R. Macaulay.)

got to the wharf he couldn't get through the gateway and had to cut the gateway and the police were after him and after everybody else, and he had that as an excuse why he didn't return to the ship with his lighter.

Q. Now, Captain Macaulay, don't you remember that it was on Tuesday evening that the "Makee" came out with that anchor and it was not until Wednesday morning that the anchor was attached to the "Celtic Chief"? A. I believe that's correct.

Q. Don't you remember that the "Mokolii" came alongside the "Celtic Chief" Tuesday evening and threw a heaving line aboard? A. Yes.

Q. And don't you remember that it was not until next morning that Captain Miller came on board the "Celtic Chief"? A. It was next morning.

Q. What did Captain Henry say about this anchor when Captain Miller said he had brought it out?

A. At what time?

Q. On Wednesday morning?

A. When he came on board?

Q. Yes.

A. Well, he had some private conversation with Captain Henry that I didn't hear, about this anchor.

Q. Didn't you testify that you were standing there and heard the conversation between the two?

Mr. WARREN.—I object, the witness hasn't finished his answer.

The COURT.—Captain Macaulay, had you finished your answer?

Q. Captain Macaulay, I didn't happen to be looking at you. Were you going to say something else?

(Testimony of J. R. Macaulay.)

A. That question, your Honor, requires quite an explanatory answer and if you will permit me I will answer that question to the best of my knowledge and belief of what I know concerning Captain Miller's conversation with Captain Henry in reference to that anchor.

The COURT.—Mr. Olson don't want what it was, as I understood it. He asked if there was any conversation.

Mr. OLSON.—That's it exactly. [2737—1906]

Mr. WARREN.—Your Honor overrules my objection.

The COURT.—Yes, I overrule the objection.

(Question read.)

A. I don't remember of so testifying.

Q. Where were you at the time that this conversation was going on between Captain Miller and Captain Henry?

Mr. WARREN.—What conversation?

Q. The conversation which you have testified to.

Mr. WARREN.—When?

Mr. OLSON.—Wednesday morning.

The WITNESS.—What is the question?

Q. Where were you?

A. I was on board the "Celtic Chief."

Q. How were you able to ascertain then that Captain Henry had said to Captain Miller, "Why didn't you come back?" and how do you know that Captain Miller stated the reason was because he was getting this anchor off—you were not within hearing distance of that conversation?

A. That particular conversation was made in,

(Testimony of J. R. Macaulay.)

within hearing of more people than myself.

Q. Well, where were you?

A. I was aboard of the "Celtic Chief."

Q. How near to Captain Miller and Captain Henry? A. A few feet.

Q. And a part of that conversation you didn't hear?

A. A part of that conversation was spoken very low. The conversation I heard every person on the poop deck of that ship heard.

Q. Now, then, go on and state what the conversation was that you heard.

A. Captain Henry asked Captain Miller why he did not return with his vessels to lighten the ship.

Q. Yes.

A. Captain Miller made an excuse, saying that he was employed getting this anchor from somewhere around the vicinity of the railroad wharf towards the channel wharf. When he arrived at the channel wharf he found that the anchor wouldn't go through the gateway and he had to cut away the gateway and was in trouble with the authorities for cutting away the gateway. That was the cause of his delay in not coming back.

Q. Did you hear anything else of the conversation?

A. At that time I don't recollect of hearing anything else.

Q. Didn't Captain Miller, in your hearing, state that he had the [2738—1907] anchor on the "James Makee" or that he had dropped it and didn't he want to know why they let go his heaving line the night before?

(Testimony of J. R. Macaulay.)

A. I didn't hear that to the best of my knowledge and belief.

Q. Didn't you hear Captain Henry tell Captain Miller that the reason why he had let go the heaving line was because the anchor was not in the right position? A. No.

Q. You didn't hear that? A. No.

Q. Did you hear any words, and heated words, between the two other than what you have stated?

A. None that I can remember.

Q. Did either of them appear to be angry?

A. Captain Henry was not at all pleased with the deal in Captain Miller's coming to the vessel.

Q. After Captain Miller had explained to Captain Henry, did he cool down?

A. He did, to a certain extent.

Q. And it was after that that the conversation took place that you didn't hear? A. Yes.

Q. Did Captain Miller at any time in your presence or within your hearing state that it was suicidal to lighter cargo from the "Celtic Chief" without having an anchor placed out to hold her?

A. I don't remember Captain Miller ever making such a remark to Captain Henry.

Q. What?

A. I don't remember Captain Miller ever making such a remark.

Q. Don't you think you would have heard it if he had made such a remark? A. I think so.

Q. Did you hear Captain Miller make this remark, that he would take his anchor and go back and Henry, the captain, would lose his certificate or he would see

(Testimony of J. R. Macaulay.)

to it that the captain lost it?

A. I don't remember hearing any such remark.

Q. If there had been any such remark would you have heard it? A. I think so. [2739—1908]

Monday, October 16, 1911.

Q. In regard to position, Captain, of the various towing steamers, which one do you think was in the greatest danger? A. Beg your pardon?

Q. Repeat the question, Mr. Soares.

(Question read.)

A. They were all about in the same danger.

Q. I see. The "Arcona" in as much danger as any of them? A. About the same.

Q. Do you remember just what steamers were attached to the "Celtic Chief" at the time the "Mikahala" began to take cargo from the "Celtic Chief"?

A. No, I don't remember.

Q. You remember, however, do you not, that the "Intrepid" still had its line attached?

A. I remember the "Intrepid" having her line attached after the "Mikahala" attached her line.

Q. Well, don't you know that the "Mikahala" began to take cargo from the "Celtic Chief" before the "Intrepid's" line was cut?

A. Well, I don't remember. I couldn't state positively when the "Mikahala" started to transfer the cargo.

Q. Well, it began, did it not, the day before the "Celtic Chief" came off?

A. Oh, yes, I believe so.

Q. Now, what other Inter-Island vessel took cargo from the "Celtic Chief"? A. The "Mikahala."

Q. Any other? A. I believe the "Helene."

(Testimony of J. R. Macaulay.)

Q. Now, I ask you this, Captain, as the "Celtic Chief" lay aground before she started to come off at all, she had a considerable depth of water at her bow, did she not? A. She did.

Q. How much about?

A. She had about sixteen feet at her bow.

Q. Sixteen feet at her bow? A. Sixteen feet.

Q. I believe you said on direct that the formation of the reef is such that there is a ledge several feet high, two or three feet high, that went a considerable way and then there would be another ledge that would go in again a [2740—1909] considerable way; is that right?

A. That's the exact position of that reef.

Q. About how far from the bow of the "Celtic Chief" was the nearest ledge, would you say?

A. Oh, it was quite a distance.

Q. How far do you think?

A. A few hundred feet.

Q. Several hundred feet? A. A few, yes.

Q. Well, then, Captain, there would have been no difficulty for a small boat rowing around the bow of the "Celtic Chief," would there, in sixteen feet of water?

A. Well, if it was smoother there would be no difficulty, if it is smooth.

Q. Would there be any more difficulty in rowing around the bow of the "Celtic Chief" whatever the weather might be than in rowing alongside the "Celtic Chief" on her starboard quarter, starboard side or either side?

A. I don't quite understand your question.

(Testimony of J. R. Macaulay.)

Q. Well, would there be any more difficulty for a shore boat to circle around the "Celtic Chief," not coming too near, staying off a hundred feet, say, from, the side, a hundred feet ahead of her bow, in rowing around the "Celtic Chief" than going by on her port side? A. Around the stern?

Q. Yes.

A. There would be less under her bow.

Q. As a matter of fact, with the kind of a swell that was running there on Monday, Tuesday and Wednesday, would there have been any difficulty particularly for shore boats going around the bow of the "Celtic Chief" from one side to the other, staying clear fifty or sixty or a hundred feet?

A. There would be no difficulty going from the side of the "Celtic Chief" until you approached the bow; you would be going with the swell and with the current, but when you did cross the bow and pulled on the opposite side of the "Celtic Chief," then you would have a further distance against the swell and [2741—1910] current. That is, there would be more danger than if you had gone from your first point directly astern; you'd be increasing the danger by going around the bow.

Q. Now, which side—well, let me ask you this, Captain: if a shore boat, under the conditions prevailing Monday, Tuesday, or Wednesday, or during the nights of those days, were to have gone to the Diamond Head side of the "Celtic Chief," staying clear of her fifty or a hundred feet, and had proceeded fifty or sixty or a hundred feet in that way and then had gone across and gone around on the other side of the vessel, would there have been any difficulty, par-

(Testimony of J. R. Macaulay.)

ticular difficulty, except rowing against the swell and the *carring*, in coming back?

A. Well, you would increase the distance, but there would be no further difficulty.

Q. There would be no other difficulty than that?

A. Not that I know of.

Q. You are able to judge pretty well, aren't you?

A. I believe so.

Q. So that the boats of the "Mikahala" could have come around to the opposite side of the "Celtic Chief" and have taken cargo from that side with just as little danger and difficulty as they could have on the side that they did cargo except for the additional distance they would have to travel?

A. Well, there was another matter that was taken into consideration.

Q. What was that?

A. They were working cargo on the other side of the ship around the vessels, and if the "Mikahala's" boats had gone around the bow and approached her stern to take cargo on that side, why they would be detained a longer time.

Q. I'm not referring to a gain or loss of time in that respect. Assuming that there was a berth for them, the only consideration would be the additional distance they would have to go.

A. Yes, and the time lost. [2742—1911]

Q. The additional time and distance?

A. Time and distance.

Q. Now, Captain, as a matter of seamanship, it would be better, would it not, to sacrifice that additional time and distance rather than incurring the

(Testimony of J. R. Macaulay.)

greater risk or danger of operating on the side where the swell was the greatest, would it not?

A. I don't agree with you.

Mr. WARREN.—I object to that question. It seems to me that calls for a conclusion of the witness without stating facts on which a conclusion is to be based, your Honor.

Mr. OLSON.—Oh, well, I'll withdraw the question.

Q. The swell was running on the one side of the "Celtic Chief" more than the other, was it not?

A. Yes.

Q. Which side?

A. It was higher on the starboard side of the "Celtic Chief."

Q. That's where it got the swell, was it not?

A. On the starboard side, yes.

Q. And, therefore, the operation of the shore boats on the port side of the "Celtic Chief" was easier than on the starboard side, was it not?

A. Yes, I should consider the port side the lee side to a certain extent.

Q. Where would the swell begin to break in travelling in to the shore. First, you say there was sixteen feet at the bow of the "Celtic Chief." Where would the swell begin to break on the reef?

A. When?

Q. At any time?

A. The swell would begin to break at the first obstruction.

Q. Where would that be?

A. At the ledge of the reef.

(Testimony of J. R. Macaulay.)

Q. Practically astern?

A. At the stern of the "Celtic Chief," little further out.

Q. And there's where the action of the swell would be greatest?

A. That would be the first break.

Q. Until it reached the next ledge? [2743—1912]

A. Until it reached the next ledge?

Q. It would gradually diminish from that point until it reached the next ledge? A. It would.

Q. So that the sea would be running less high, the breakers would be less violent at the bow of the "Celtic Chief" than at her stern? A. It would.

Q. As a matter of fact, the difficulty of navigating with a shore boat diminished the farther it went until it came to the second ledge, wouldn't that be true?

A. That would be true.

Q. Could a shore boat have gone underneath the lines of the towing steamers, directly astern of the "Celtic Chief" with safety? A. No.

Q. It could not? A. No.

Q. That would not be possible at all.

A. Well, it would be possible but it would not be practicable.

Q. Well, did any of the boats attempt to do anything of that sort? A. I don't believe they did.

Q. Will you state how the boats that were taking cargo to the "Helene" reached the "Helene"? In other words, what course did they travel?

A. They travelled directly from the "Celtic Chief" to the "Helene." She was lying in a south-

(Testimony of J. R. Macaulay.)

west direction from the "Celtic Chief."

Q. Now, how did they get around the "Likelike"?

A. The "Likelike" was to the westward of the "Helene"?

Q. To the westward of the "Helene"?

A. To the westward.

Q. Well, how did the boats going to the "Likelike" reach her then? A. "Likelike"?

Q. Yes.

A. I think the boats from the "Likelike," they went from the "Celtic Chief" to the starboard side of the "Likelike," as near as I can remember.

Q. Well, how did they get around the "Helene"?

A. They didn't have to get around the "Helene."

[2744—1913]

Q. Well, as a matter of fact you first had the "Intrepid" and later the "Arcona" in one position nearest to what vessel, what boat? A. The "Helene."

Q. And next to that, what boat?

A. The "Likelike."

Q. Now, then, in order to reach the "Helene," wouldn't the shore boats leaving the "Celtic Chief" be obliged to go either beneath or over the lines of the "Helene" or of the "Likelike" in order to reach the "Helene"?

A. Well, the lines of the "Helene" was fast on the port quarter to the "Celtic Chief" and the line of the "Likelike" was fast on the port after chock to the "Celtic Chief" right at the break of the poop.

Q. That is the like of the "Likelike"?

A. The "Likelike."

Q. Yes.

(Testimony of J. R. Macaulay.)

A. Now, the "Likelike" boats went to the westward of their own line and I am not positive whether the "Helene" did transfer any cargo or not from the "Celtic Chief."

Q. You are not sure about that?

A. I am not sure about that.

Q. You are sure the "Likelike" did though?

A. Yes, I am sure the "Likelike" did.

Q. You saw the shore boats going to the starboard side of the "Likelike" and there putting their cargo on board the "Likelike"?

A. As near as I can remember I believe that is the way they arranged it.

Q. You saw them, didn't you? Isn't that what you said a little while ago?

A. I said the line of the "Helene" was fast on the port quarter of the "Celtic Chief" and that the line of the "Likelike" was fast on the port after chock right forward of the break of the poop of the "Celtic Chief" and I know that they did operate cargo on that side.

Q. Which one was farthest forward of those two points, the port forward chock or the after chock?

A. The "Likelike's" line was fast forward.
[2745—1914]

Q. The "Likelike's" line was fast forward?

A. Yes.

Q. That is the after chock which you say was just forward of the break of the poop?

A. Yes, that was the "Likelike's" line.

Q. That was farther forward than the port quarter chock? A. Oh, yes.

(Testimony of J. R. Macaulay.)

Q. How much farther forward?

A. Well, about forty feet or so.

Q. Now, where was it that the boats on that side of the "Celtic Chief" were receiving cargo, aft or forward of the chock through which the "Likelike's" line passed into the "Celtic Chief"?

A. They were receiving cargo out of the main hatch and out of the after hatch.

Q. Well, was that forward or aft of the chock through which the "Likelike's" line passed?

A. The after hatch was about right abreast of that chock and the main hatch forward of that chock.

Q. Now, then, whichever hatch they were receiving cargo from they were obliged, in order to reach the "Helene," to go underneath the "Likelike's" line or else go around the "Likelike"?

A. Yes, they would have to do either one thing or the other.

Q. Which did they do?

A. I really don't remember, but I would suppose that they would go under the "Likelike's" line at the after hatch.

Q. Was there any difficulty in doing that?

A. Not if there was a strain on the line; there would be if the line was slack.

Q. But there was a strain on the line?

A. There was a strain on the line.

Q. Don't you remember, Captain, that all of the boats, as a matter of fact, taking cargo on that side took cargo out to the "Helene" and not to the "Likelike"? [2746—1915]

A. I don't remember.

(Testimony of J. R. Macaulay.)

Q. It might have been so?

A. It might have been so.

Q. So that your recollection to which you testified a few moments ago, that it was the "Likelike" and not the "Helene," or rather the "Likelike" rather than the "Helene," which received cargo may have been mistaken?

A. I didn't pay particular attention to the steamer they delivered the cargo to. I know they were working on that side, both hatches, and they were working on the other side to the "Mokolii." I didn't pay any particular attention to what steamer they were carrying the cargo to.

Q. I refer you now, Captain, to the conversation between Captain Miller and Captain Henry—no, not Captain Miller—Captain Henry and the man in charge of the "Mokolii," when the "Mokolii" came up and threw this heaving line on board the "Celtic Chief." You stated, I believe, that there was some words between the "Mokolii" and Captain Henry. Will you state as nearly as you can what those words were?

A. Well, it's so long ago that it's almost an impossibility to remember what those words really were. I remember distinctly the "Mokolii" towing the "James Makee" out and throwing that heaving line over. I also remember that Captain Henry and Captain Haglund and myself, we were standing on the poop and when they did throw the heaving line over, Captain Henry took ahoid of the heaving line and was about to haul it in when I advised him not to. The captain of the "Mokolii" did request to make

(Testimony of J. R. Macaulay.)

the line fast. What the words were between Captain Henry and the captain of the "Mokolii" I can't recall to memory at this time.

Q. Do you know whether or not Captain Henry said anything about the anchor?

A. I believe there was something said about an anchor.

Q. Well, what was it?

A. In fact—well, I don't remember what the words were, but we understood, at least I understood, that the "Makee" had this anchor. [2747—1916]

Q. That's what the "Mokolii's" captain called out to the "Celtic Chief"?

A. I believe it was something in reference to that anchor.

Q. Well, did Captain Henry say that he didn't want any anchor? A. Well, I don't believe he did.

Q. You don't remember anything of that sort?

A. I don't remember.

Recess.

Q. You said something on direct testimony, Captain, about the "Mauna Kea's" leaving by reason of a mail contract that she had. Will you state whether or not you knew or know of your own knowledge of any such mail contract or is that simply based on what someone else has told you?

A. I know of my own knowledge and as manager of the gasoline schooner, that it was necessary to have an agreement, contract, whatever it was, with the United States to carry mail.

Q. Now, just a moment, Captain. Do you know

(Testimony of J. R. Macaulay.)

the terms of the contract that the Inter-Island Steamship Co. has with the United States with reference to the "Mauna Kea"? A. No, I do not.

Q. You don't know whether that contract was actually in existence on that day or not, of your own knowledge?

A. I know of my own knowledge that that contract is or was in existence at that time.

Q. Had you seen the contract? A. No.

Q. Then you couldn't know of your own knowledge? A. I know that they carried the mail.

Q. That's the only reason you have for stating that the "Mauna Kea" was under contract?

A. That is the reason.

Q. That is the only reason?

A. Well, my knowledge of the fact that they must have a contract or otherwise they couldn't carry the mail.

Q. And I say that is your only reason? [2748—1917] A. That is my only reason.

Q. You never saw any such contract?

A. I never saw any such contract.

Q. Whether or not the "Mauna Kea" was obliged to carry mail the day that she left, you don't know, do you?

A. I don't know of my own knowledge whether she was obliged to carry mail upon that special day or not.

Q. Have you ever been in the employ of the Inter-Island Steam Navigation Company? A. I have.

Q. How long ago was that?

A. Over twenty years ago.

(Testimony of J. R. Macaulay.)

Q. For the last twenty years you have not been in the employ of the Inter-Island Company? A. No.

Q. Do you think, Captain, that the amount of current and wave produced by the propellers of the towing steamers as they were towing on the "Celtic Chief" would have any tendency to throw the "Celtic Chief" farther ashore?

A. No, I believe they would not.

Q. Not enough of it?

A. Not enough of it, but I do say that I do believe that was, that the current caused by the propellers would have a tendency to clear away the sand *a* top coral under the bottom.

Q. So that if Captain Bray has testified that the current or wave produced by the propellers would have a considerable tendency toward throwing the "Celtic Chief" farther ashore, your opinion is directly contrary to that; is that right?

A. I believe the current created by the propellers—

Q. Can't you answer my question, Captain?

A. That's what I'm trying to do. I don't know anything about Captain Bray.

Q. I've told you what Captain Bray has testified and I'm asking you whether you agree or disagree with him. A. I don't agree with him.

Q. That's what I want to find out. Do you remember seeing Captain Bray come out to the "Celtic Chief" in the quarantine launch?

A. Yes, I remember that. [2749—1918]

Q. Do you remember what time of day he came?

A. He came in the forenoon.

(Testimony of J. R. Macaulay.)

Q. About what time?

A. That was after seven o'clock.

Q. After seven. Wasn't the "Celtic Chief" aground before he came out there? A. She was.

Q. Did you see the quarantine launch come out from the harbor that morning?

A. I believe I did see the quarantine launch coming by the channel.

Q. Where did it go when it first came out?

Mr. WARREN.—I think this is not proper cross-examination. I withdraw my objection.

A. What is the question?

Mr. WARREN.—I renew my objection and ask the Court to rule.

The COURT.—I allow the question.

A. As near as I can remember, the quarantine launch came out and approached the "Celtic Chief" on the port side and landed her doctor.

Q. Don't you know that the quarantine launch went out and went to two other vessels before she came to the "Celtic Chief"?

A. I don't remember.

Q. Then you didn't see it come out of the channel?

A. I did.

Q. And it came directly over to the "Celtic Chief"?

A. The next time I saw the launch was her coming out to the port side of the "Celtic Chief" and landing the doctor.

Q. How long after you first saw her coming out of the channel was that? A. A short while.

Q. Fifteen or twenty minutes?

(Testimony of J. R. Macaulay.)

A. I don't remember the exact time.

Q. Would it be as much as an hour or two?

A. It would be less than an hour, I believe.

Q. You aren't sure on that point, are you, Captain?

A. I'm not sure of the exact time from the time I saw her in the channel, coming out and the time I saw her alongside [2750—1919] the "Celtic Chief."

Q. And the launch might have been out and visited one or two other vessels in the meantime?

A. Might have been, for all I know.

Q. At any event, the "Celtic Chief" was already aground when the quarantine launch first came out of the channel that morning?

A. Yes, she surely was.

Mr. OLSON.—I think that's all.

Mr. WARREN.—At this time, your Honor, I would ask for a ruling upon the last question put to this witness on direct examination, it being remembered that the direct examination is open for the purpose of that ruling, and that will determine whether or not I have any further question unless your Honor wishes to keep it reserved further and let Mr. Weaver proceed in the same manner that Mr. Olson has and take that matter up later.

The COURT.—I will allow the question. The case I refer to is 95 U. S. which has been referred to already.

Mr. WARREN.—What is the case?

The COURT.—95 U. S. 298-9.

(Testimony of J. R. Macaulay.)

Redirect Examination of J. R. MACAULAY.

Mr. WARREN.—Q. The last question was this one, Captain. I will restate to you, Captain, the last question which was put to you on direct examination, namely: What, in your opinion, was the cause of the floating of the "Celtic Chief," stating upon what you base your opinion, including your own experience in salving vessels and maritime matters, in navigation, as well as your own knowledge of the facts.

Mr. OLSON.—My objection is, of course, renewed to this question and I understand the Court overrules the objection.

The COURT.—The objection is overruled.
[2751—1920]

A. To the best of my knowledge and belief, I consider that the salving of the "Celtic Chief" was due to the assistance rendered her by the Inter-Island Steam Navigation Co., in lightering the cargo and in towing the ship, also partly due to the tug "Intrepid" and Young Bros., gasoline launch in holding the ship in position until such time as the Inter-Island Steam Navigation Co. took hold, and I also believe that the salvage of the "Celtic Chief" was partly due to the Miller Salvage Co., whereby they lightered and laid a sea anchor with a powerful purchase and gave material aid in floating the vessel, and I also will state that I believe that by a rise in tide that the rise in tide greatly helped the floating of the "Celtic Chief," and all these combined were, to the best of my knowledge and belief, the cause directly to the rescue of the vessel and cargo.

(Testimony of J. R. Macaulay.)

Mr. OLSON.—And what?

A. And cargo.

Q. Have you fully stated in answering this last question, various facts upon which you have based your opinion as fully as you can?

A. I have stated in what I have just stated my full opinion of the cause or the causes which were the means of rescuing the “Celtic Chief” and her cargo.

Mr. OLSON.—No other cause contributed, as far as you know? No other factor?

A. Yes, there was another slight aid.

Q. State it.

A. The crew of the “Celtic Chief” helped in making hawsers fast on board; they helped in rigging gear for discharging the cargo. In that manner they assisted somewhat.

Q. Whose idea was it that the ship should be lightened?

A. No one in particular. We all agreed upon the method which we should pursue towards the rescuing of the vessel and her cargo. [2752—1921]

Q. Didn't you and Captain Henry confer together and decide that it would be a wise thing to have the vessel lightened?

A. We did confer on mostly all the processes that were undertaken.

Q. Haven't you testified that Captain Henry was directly in charge of all of the salvage operations?

A. I have testified that Captain Henry was in charge of his ship.

Q. Haven't you testified that he was also in charge of the salvage operations?

(Testimony of J. R. Macaulay.)

A. To a certain extent he was.

Q. Haven't you testified that Captain Miller was obliged to follow his directions because he was the captain of the ship in charge of everything in connection with her?

A. Captain Miller was ordered by the master of the "Celtic Chief" through the advice of Captain Haglund and myself to place the anchor in a different position to what he had first placed it in. I believe and I think if it had been left to Captain Henry's own idea that that anchor would not have been shifted.

Mr. OLSON.—Moved to strike that last statement as a conclusion of the witness.

I move to strike the whole answer on the ground it is not responsive.

The COURT.—The last part of the answer may be stricken. The last part is an answer in a way but he goes off on another point. I will allow the first part of the answer to stand. If you can give a direct answer to Mr. Olson's question you will do that. He asks in regard to the lightering, as I understand, was it not, Mr. Olson?

Mr. OLSON.—Yes, I asked before in regard to the lightering and whose idea it was and he says that it wasn't the idea of anyone in particular. Let's have the question.

The COURT.—I allow the motion, Mr. Olson. The whole answer is stricken. [2753—1922]

Mr. OLSON.—Let's have the question.

(Question read.)

A. I consider that Captain Miller and every other

(Testimony of J. R. Macaulay.)

person having connections with the "Celtic Chief" were directly under the orders of Captain Henry, the master of the ship.

Q. And you have so testified in reference to Captain Miller, haven't you?

A. Captain Miller and all the others.

Q. You have so testified with reference to Captain Miller, haven't you? A. I have.

Recess.

Q. And, as a matter of fact, Captain, it was in response to a direction of Captain Henry's, was it not, that the Miller Salvage Company's anchor was transferred from the position it was dropped in on Tuesday night to the position which it finally occupied? That's correct, is it not?

A. Yes, that is correct.

Q. It was Captain Henry, was it not, who ordered the "Intrepid" to cut loose, cut loose in order to permit the "Arcona" to take the position of the "Intrepid"? A. It was.

Mr. OLSON.—I think that's all.

Cross-examination of J. R. MACAULAY on Behalf
of Miller Salvage Co.

Mr. WEAVER.—Captain, what was the name of that part of the shackle which the Miller Salvage Co. had on this wire cable to the anchor which goes through around from this point?

A. That is the eye of the shackle.

Q. Is the eye the name that would describe what goes through that part? A. No.

Q. What is that called? A. The pin.

Q. The pin and the eye?

(Testimony of J. R. Macaulay.)

A. The pin goes through the eye. [2754—1923]

Q. Has not that pin a round hole at one end of it?

A. Yes.

Q. About how large was that pin where the hole was in diameter?

A. The hole where the pin went through from the shackle wasn't a perfectly round hole. Never is. It's a hole that is kind of oval-shaped.

Q. In the pin? A. In the shackle.

Q. In the shackle. You called—the shackle, is that the round part of the two arms through which the pin goes? A. That's the shackle.

Q. That's the shackle. I'm speaking of the pin. One end of that pin has a round hole in it, hasn't it?

A. Yes.

Q. You loosen the shackle by putting some lever in that hole and twisting it; is that what it's for?

A. The hole in the pin is for the key.

Q. With the key you twist the pin in the shackle?

A. The key is inserted into the shackle and it locks the pin in the shackle. That is the reason of the hole.

Q. That is one end. Is there not another end of this pin, a round hole through which you put a lever in order to screw up the pin in the shackle?

A. No, the other end of the pin comes with a head.

Q. What's that like? Describe it.

A. It's partly round. It's near towards the side by which it connects with the tackle.

Q. Now, how big around was that?

A. The pin?

Q. Yes, how big around was that pin at that head?

(Testimony of J. R. Macaulay.)

A. I don't know exactly. I didn't measure that pin.

Q. You can give us an idea how many inches.

A. Might have been an inch and a half in diameter.

Q. Would it extend an inch and a half beyond the arms of this shackle?

A. No, I don't believe it would. [2755—1924]

Q. About how much beyond, clear of the shackle?

A. There are different kinds of shackles.

Q. Tell us about this one.

A. I did not pay particular attention to this particular shackle.

Q. About two inches?

A. No, I don't believe it would be as much as two inches.

Q. Wasn't it as if made by a round bar about two inches in diameter and then bent?

A. I don't believe it would be two inches in diameter.

Q. About how much in diameter would it be?

A. About an inch and a half.

Q. Then at the end of these bars is it not rounded out so you put threads in them?

A. Some shackles are formed that way.

Q. This one, was this one made that way?

A. I don't know.

Q. How large an eye did this shackle have?

A. The size of the pin.

Q. What is the size of the pin?

A. About the same size of the shackle.

Q. About one inch and a half?

(Testimony of J. R. Macaulay.)

A. Inch and a half.

Q. Describe the two ends of the pin.

A. In this particular shackle?

Q. Yes, this particular shackle.

A. I don't know.

Q. Don't you know anything about how large it was.

A. When the shackle came on board it was dark I couldn't see it.

Q. It was what? A. It was dark.

Q. Could you see how far it extended out beyond the arms of the shackle?

A. No, I couldn't see that.

Q. Weren't you very close to this shackle?

A. I was right next to it. [2756—1925]

Q. Weren't you handling this shackle?

A. I was.

Q. Couldn't you tell from handling it and being close to it what the shape was?

A. Well, I drew a diagram of a shackle and I suppose it would be the same as that particular shackle.

Q. I show you a drawing on Libellant's Exhibit "F" and ask you if that drawing of a shackle represents the shape of this shackle which Miller had?

A. May not represent that particular shackle that Miller had but that was the shape of an ordinary shackle.

Q. Was this not the shape of an ordinary shackle?

A. About that.

Q. This pin that goes through, does that extend out beyond in this case?

A. I don't know. In some shackles it might.

(Testimony of J. R. Macaulay.)

Q. But this pin that you refer to comes right through and locks the large pin. A little pin goes through the large pin?

A. Through that small hole. There are some shackles where the pin goes outside.

Q. You don't know what this one did? A. No.

Q. Do you know whether this one had any pin extending on both sides of this bar?

A. That I don't know.

Q. Was this shackle made without any means of twisting it out or pulling it out, do you know?

A. That I don't know.

Q. You don't know? A. I don't know.

Q. How long did it take you to get this shackle through the chock at the stern of the "Celtic Chief" that night, Wednesday?

A. It took about ten minutes.

Q. And Captain Miller was working with you then? A. He was.

Q. What means did you use to get it through?
[2757—1926]

A. The main purchase was attached to the steam winch of the "Celtic Chief" and I was standing at the chock with a capstan bar prying the shackle through with a terrific strain on the main purchase. I must have closed the shackle in sufficiently to let it come through the chock.

Q. And that was how long before the ship came off?

A. The ship was coming astern at that time.

Q. How long before the ship finally came off was that? A. That was after the ship came off.

(Testimony of J. R. Macaulay.)

Q. After the ship came off? A. Yes.

Q. After she was afloat? A. She was afloat.

Q. And how far aft of this chock was the shackle when the Miller Salvage Co. first got their line taut?

A. It was about forty feet.

Q. Then from the time that the Miller Salvage Co. had taken up the slack and got their line taut, to the time the ship floated that shackle had moved forty feet? A. It had.

Q. What did Captain Miller do with you on the poop deck that night in regard to this shackle?

A. After the shackle came through the chock I told Captain Miller to stand by and unshackle and let the wire go overboard instead of having the whole paraphernalia go over the stern—blocks, gear, and all. So when the shackle got over the main deck, I hailed Captain Miller and told him to unshackle, knock the pin out, which he did. Then the wire went over the stern.

Q. The line was unshackled after the shackle had been forward on the main deck? A. Yes.

Q. What happened to that shackle when it went through the chock this last time?

A. I don't know. I never saw the shackle afterwards.

Q. You did see the shackle then on the main deck?

A. I saw the shackle coming towards the main deck.

Q. That was after the ship was afloat? [2758—1927]

A. That was after the ship was afloat.

Q. How high is this ledge of coral where the "Cel-

(Testimony of J. R. Macaulay.)

“Celtic Chief” stuck above the ledge just forward of it?

A. About four feet, approximately.

Q. And how far—does that second ledge, the one forward, extend out to another ledge?

A. I don't know any ledge to seaward of the one you have just mentioned.

Q. Is that the last one? A. I think it is.

Q. Then, from this point where the “Celtic Chief” struck seaward, is the bottom level or slightly inclined down? A. It inclines downward.

Q. And eight hundred feet away from the “Celtic Chief's” stern about what difference in depth do you expect to find or did you find?

A. Eight hundred feet astern of the “Celtic Chief” at that particular time would *you put* in about five fathoms of water.

Q. Now, suppose you go north, a little north of stern, say on the port quarter, is that intelligible to you, Captain? A. No, it isn't.

Q. Suppose she go to the port, port quarter, as you call it, of the “Celtic Chief,” about eight hundred feet away, would that same depth be reached.

A. In what direction?

Q. Isn't port quarter of the “Celtic Chief” and eight hundred feet away intelligible to you?

A. In what direction from the “Celtic Chief”?

Q. Six points. A. What direction?

Q. Six points from the port quarter.

A. It's not intelligible to me.

Q. It is the port quarter of the “Celtic Chief”; it's off to the left and aft.

A. It's the quarter on the left-hand side looking forward.

(Testimony of J. R. Macaulay.)

Q. Do you not point out direction by so many points toward the port or toward the starboard of the stern when you're looking toward a beach?

A. Not in that manner. [2759—1928]

Q. How do you?

A. If you wish to point in a direction you want to state whether it is north, south, east, or west, then your question will be intelligible.

Q. Now, Captain, isn't it a well-known nautical means of describing, so many points, say five points off to the port quarter of the stern of a vessel?

A. Yes, but—

Q. Now, then, take that and apply it to the "Celtic Chief," five or six points on the port quarter astern of the "Celtic Chief" and eight hundred feet away, about what would be the depth there? Would it be about the same as is this other depth, dead astern?

A. No, I believe it wouldn't be so much.

Q. What would be the difference and in what way, deep or shallow?

A. It would be shallow water.

Q. Why, what's the formation of the bottom there?

A. Because there is less water to the westward in that direction that you have just stated, on her port quarter, to the southwest I would take it that you intend.

Q. So you mean to the southwest there would be less water there than there would be directly south. Then can you give an idea about what the grade was from the bottom of the "Celtic Chief" running toward the stern? What was the grade in the bottom, so many feet to a thousand.

A. A grade of about one foot to the hundred.

Q. And that was about an even grade from the

(Testimony of J. R. Macaulay.)

ledge where the "Celtic Chief," the bottom of the ledge where the "Celtic Chief" was say out for a thousand feet?

A. Oh, no, that was a grade to the outer edge of the reef.

Q. Well, then, beyond the reef and seaward, what is the grade? A. It would be more abrupt.

Q. Can you give any idea of how much? Any data?

A. Well, it would be for a certain distance, it would be considerable more than one foot to a hundred, but then you come to the end of that plane and then there is another big drop into [2760—1929] deep water. In fact, as you go a little further off you get no soundings until you are off-sounded (?).

Q. Now, this first change is about how much in a hundred feet?

A. Well, I should say three or five feet to the hundred.

Q. And does it extend about parallel with this edge of this ledge that you speak of?

A. That grade will extend about half a mile from the outer edge of the reef.

Q. And the same grade extend parallel with the ledge that you speak of, doesn't it? A. Yes.

Q. Why was it not good practice for the Miller Salvage Co. to lay this anchor on Tuesday night at night-time?

A. Because I myself personally did not think it was good practice to have the Miller Salvage Co. lay an anchor astern of the "Celtic Chief" that we could not locate and know its exact position.

Q. When you were down in the cabin with Captain

(Testimony of J. R. Macaulay.)

Henry and Captain Miller, did you feel any motion of the vessel other than the usual motion that you had felt that whole day? Any motion of coming off?

A. No.

Q. While you were down there was that the occasion when the sandwiches were eaten? A. Yes.

Q. You were down there only once for any time, any appreciable length of time? Did you have any conversation with Captain Miller about whether or not you thought the vessel was coming off at that *that* time? A. I believe we did.

Q. What did you say?

A. Captain Miller whispered in my ear that he thought she was moving.

Q. What did you say?

A. I forget now what I did say.

Q. Anything more to that? A. No, nothing.

Q. Did you express any opinion whether or not the vessel was coming off at that time?

A. Well, I forget now whether I did or not.

Q. Did you say anything to the effect, "Oh, you sit still, the [2761—1930] vessel is coming off by and by; it won't come off now"?

A. I was positive that the vessel would come off at that time.

Q. You didn't say anything about it at that time?

A. I knew she was coming off.

Q. You knew it because Captain Miller told you?

A. Oh, I didn't take any advice from Captain Miller.

Q. Didn't he inform you? A. No.

Q. How did you know?

A. From my common horse sense.

(Testimony of J. R. Macaulay.)

Q. How did you exercise your horse sense?

A. Same as I had right through.

Q. What observation had you made?

A. Lots of them.

Q. What did you observe?

A. I just answered your question by telling you I knew she was coming. If I knew the ship's draught—

Q. You are not answering the question. Say how you know it—I mean at that time when you were in the cabin. What had you done to observe that the ship was coming off?

A. We had studied the ship's draught and loading and her water displacement. We had also obtained the time of high water and we also knew exactly the amount of water it would take to float the ship, so we could tell pretty near the time the ship would come off that night.

Q. So you knew what time was high water?

A. We did.

Q. What time?

A. It was high water between twelve and two.

Q. You knew closer than that?

A. That was close enough.

Q. Is two hours close enough? A. Yes.

Q. There is considerable difference in tide in two hours.

A. There is a considerable difference in the displacement of the ship in two hours.

Q. Two hours made a considerable difference if a tide is 1.7 feet, in low and high tide.

A. The difference in the tide [2762—1931]

(Testimony of J. R. Macaulay.)

and the difference in the lightering of the ship was the cause of us knowing that the ship was coming off.

Q. You knew that high tide was coming between 12 and 2 o'clock? A. Between 12 and 2 o'clock.

Q. You didn't know any closer than that?

A. At the time I didn't know exactly.

Q. How long before high tide would be good practice to begin to pull that vessel?

A. About ten o'clock.

Q. How long before high tide?

A. About four or five hours.

Q. Then you should begin to pull before five hours in good practice? A. Yes.

Q. Then it's wise to begin to pull within an hour of low tide? A. No.

Q. How long after low tide is it good practice to begin to pull?

A. After low tide? Well, it's within five hours of high tide?

Q. Isn't that a waste of power, Captain, pulling five hours before high tide?

A. No, I don't consider it so.

Q. Would not the swells which lifted the "Celtic Chief" at the time she was made fast to the Miller Salvage anchor aid the Miller Salvage cable that Wednesday night materially in assisting the vessel off the reef, in your opinion?

A. Yes, it would, very much so.

Q. Would it not, by lifting the vessel when it was in a fixed position, that is, assisting any loosening a vessel for its position? A. It would help it.

(Testimony of J. R. Macaulay.)

Q. What is the best means of holding a vessel upon that reef when the swell is greatest, that you know of? A. What?

Q. What is the best means of holding a vessel upon the reef when the swell is greatest, while she is being lifted by the swell?

A. To heave on the anchor.

Q. Provided it holds. A. Provided it holds.

Q. If the Miller Salvage Co. attempted to lay that anchor on [2763—1932] Wednesday morning eight hundred feet astern of the “Celtic Chief” and a little on the port quarter, would that have been a safe position to put the anchor?

A. It wouldn't have been a satisfactory position, not to the westward of the “Celtic Chief's” position.

Q. Would it have been safe so far as depth of water is concerned, eight hundred feet away?

A. If it had been laid eight hundred feet from the “Celtic Chief,” it would have been of great assistance.

Q. And suppose it was laid eight hundred feet from the “Celtic Chief” and a little to the port quarter of dead astern, a little to the port quarter and not astern? In other words, if they attempted to lay it at the same angle and got a line for a fact, eight hundred feet away, would that have been a safe place so far as depth of water is concerned.

A. It would have been an aid to the vessel, but it would not have been a proper place to lay the anchor.

Q. Would it have been *dangers* from the fact that the water was too shallow to lay it there?

A. Well, to the westward of the vessel there was

(Testimony of J. R. Macaulay.)

shallow water, lots of it, and a vessel, if she did float off with the aid of that anchor in that position, she would be liable to go, leave the reef to the westward.

Q. How would that occur, Captain?

A. That anchor and the current would send her to westward.

Q. When the "Celtic Chief" took up the first position, or rather when the Miller Salvage Company, the "James Makee," took up the first position on Wednesday morning, about how many points from a line dead astern of the "Celtic Chief" were there?

Mr. WARREN.—I object to that as not being a correct statement of the testimony, your Honor.
[2764—1933]

Mr. WEAVER.—Leave out the time, Captain. I withdraw the question. When the "James Makee" with the anchor took her first position, about how many points on the port side of the "Celtic Chief" was she, if you know?

A. She was bearing four or five points on the port quarter.

Q. Well, now if she were four or five points on the port quarter and about eight hundred feet away, would that have been a dangerous position with regard to the depth of the water?

A. Well, she wasn't eight hundred feet away.

Q. Now, I'm just assuming that she was.

A. If she was eight hundred feet away it would have been sufficient water to float the "Celtic Chief."

Q. And would it have been a safe place so far as holding her from going on the reef is concerned?

A. No, I believe not.

(Testimony of J. R. Macaulay.)

Q. What would be the difference?

A. The ship would drift over to the westward.

Q. Would that four or five points make a difference? A. Sure it would.

Q. Would it make enough difference to be appreciable? A. It certainly would.

Q. How do you account for the difference? What is the element of danger had by that position?

A. Any anchor to the westward of the "Celtic Chief's" position would incline the vessel to that direction and would be aided by the wind and current. Naturally, she would drift to the westward and as she drifted to the westward the water became less.

Q. Would there be an appreciable difference between the point dead astern, eight hundred feet astern, and four or five points to the port side, eight hundred feet astern? A. Oh, yes.

Q. What do you think would be the difference?

A. Probably two or three fathoms. [2765—1934]

Q. As much as that? A. Yes.

Q. When you speak of points, in nautical degrees, how many degrees of an arc of a circle does it take?

A. Eleven.

Q. Then four or five points, fifty degrees, something like that? A. Yes.

Q. During the half hour before the "Celtic Chief" moved off were the lines of the "Arcona" sagging in the water?

A. What do you mean by sagging in the water?

Q. Were they not emerged, submerged in the water, at least part?

A. Yes, towards the center, they were.

(Testimony of J. R. Macaulay.)

Q. About how much of the center if you can give a proportion?

A. From the "Celtic Chief" rail or deck would be fifty feet of wire out of the water and the same would come from the "Arcona" rail to the water, that would make a hundred feet out of the water. The balance would be, naturally, in the water.

Q. That was the condition during about the half hour to the time the "Celtic Chief" floated?

A. That was the condition of the line.

Q. How far does the—

Mr. WEAVER.—That's all.

Mr. OLSON.—I have one or two more questions.

Mr. OLSON.—How were you able to determine *to determine* at that time, the exact time of the tide and the exact height of the tide.

Mr. WARREN.—What tide do you mean?

Mr. OLSON.—The tide he has spoken of.

A. By obtaining the tide tables out of the evening paper.

Q. Did that give the height of the tide also?

A. Yes.

Q. Do you know what that's taken from, the table in the paper?

A. Taken from the Government survey offices in Honolulu. [2766—1935]

Q. Does that correspond with the tide table from the United States tables which are in evidence here of the Coast and Geodetic Survey?

A. That I don't know.

Q. Don't you know that the tables which have been placed in evidence are based on observations taken

(Testimony of J. R. Macaulay.)

here in Honolulu? A. I won't say.

Q. Did you not testify that those are exact?

A. I testified to the best of my memory that I didn't recognize it.

Q. Then if, as a matter of fact, that tide table is based upon observation taken by United States officials here in Honolulu, are you prepared to say—

A. I am still prepared to say that I don't acknowledge that as a table.

Q. And you do admit that tables from the United States are taken from observation? A. I do.

Q. If that table is taken from observation by the United States officials, as tide tables you are still prepared to say that they are not correct?

A. I am still prepared to say that I don't acknowledge it.

Q. Why don't you?

A. Because they are not signed.

Q. It is not based upon the fact that you can't accurately determine the tides here in Honolulu?

A. If an article is signed by a hydraulic engineer or surveyor, I take it for its face value.

Q. That's the reason you take them?

A. That's the reason.

Q. It wasn't because there are big gales in Honolulu *which* a difference in tides of such a character that they cannot be determined in advance?

A. I still maintain, as I did in my former testimony, that there are tides and gales and other causes.

Q. Which is the reason, because that tide table that we showed to you is not signed or was it because the table— [2767—1936]

(Testimony of J. R. Macaulay.)

A. This is one of the unsigned—

Q. Which is the reason, or are they both unsigned?

A. They are both unsigned.

Q. So, as a matter of fact, you couldn't determine in advance what the exact height of tide would be?

A. No, not in advance.

Q. So you couldn't know, as a matter of fact, that the tide would be high enough to float the "Celtic Chief," even though you knew the amount of lightering?

A. Look to the tide table, the tide would be from twelve to two o'clock. Now, I still maintain that with all the hydraulic engineers and keeper of tide that he does not know accurately the exact height tomorrow.

Q. And neither could he tell the height of the tide?

A. Not exactly.

Q. Now, how were you able to determine to such an exact degree that the "Celtic Chief" would float with a certain amount of lightering if you couldn't know in advance what the height of the tide would be?

A. I knew in advance that we would have more than the height necessary.

Q. How did you know that unless you had some table? A. By my own practical experience.

Q. Doesn't the tide vary? A. It does.

Q. Doesn't it vary appreciably?

A. Not very appreciably.

Q. How much?

A. The height of an average tide in the vicinity of Honolulu is eighteen.

(Testimony of J. R. Macaulay.)

Q. Doesn't it vary from that? A. Yes.

Q. How much at the extreme?

A. Three or four inches.

Q. And doesn't the time vary? A. The time?

Q. Yes. A. Yes, sure.

Q. How much?

A. Well, the tides vary about three-quarters of an hour. [2768—1937]

Q. And that's all? A. That's about all.

Q. So that to that extent, at any rate, with those variations noted, the tide tables as shown in the United States Coast and Geodetic Survey would be correct, wouldn't they, with those variations?

A. With those variations they would be very near correct.

Q. You didn't explain that, did you?

A. I don't believe the question was asked me before.

Q. You simply declared that those tide tables were not correct. A. I declare so still.

Q. And you know that with a certain amount of lightening that there would be a sufficient high tide sometime between twelve and two to float the "Celtic Chief"? A. I did.

Q. Now, Captain Macaulay, about what time of night was it that you were down in the cabin there eating sandwiches?

Mr. WARREN.—That is improper recross, your Honor.

The COURT.—I allow the question.

Q. Answer the question.

A. It was after ten o'clock.

(Testimony of J. R. Macaulay.)

Q. Was it before eleven?

A. Well, it was sometime after ten o'clock. I wouldn't be positive.

Q. Well, do you think it was before or after eleven?

A. I really forget the exact time, but I know that we had, we had hoisted the first red light at ten o'clock for the Inter-Island steamers to pull hard then. After they started to pull hard, the Miller Salvage Co. got a superior strain on their anchor purchase, then there was no more to do but wait for the rise in tide and about that time we went down below and had those sandwiches.

Q. Then, according to your best recollection, it would be somewhere between ten and eleven o'clock?

A. Somewhere around there.

Q. It would hardly be any later than eleven o'clock?

A. About there sometime. [2769—1938]

Q. It was while you were down there having that lunch that Captain Miller, you say, made this comment to you?

A. Yes, it was at that time.

Q. Did he say that the ship was coming now?

A. No, I don't believe he did.

Q. Was there—what was there that caused him to make a comment, a bump or some motion or some noise? A. Well, there was no motion.

Q. Was there some noise?

A. Oh, no noise that I could observe out of the ordinary.

Q. Captain Macaulay, now, aren't you—isn't it

(Testimony of J. R. Macaulay.)

the fact that it wasn't Captain Miller at all that made that comment but it was Captain Henry who remarked that he thought the ship was coming off?

A. No, I don't think so.

Q. Might have been? A. Might have been.

Q. You don't think so? A. I don't think so.

Q. But Captain Miller didn't say that the ship was coming?

A. Captain Miller, as near as I can remember, whispered in my ear. He said, "I believe she's moving or about to move."

Q. Why did he whisper in your ear?

A. I don't know why.

Q. Did Captain Henry hear that whispered conversation? A. No, I don't believe he did.

Q. Apparently tried to keep it from Captain Henry's ears?

A. I don't know what his ideas were, I'm sure.

Q. That was earlier than you expected the ship to come off, wasn't it?

A. I expected the ship to come off any time after ten o'clock that night.

Q. Any time? A. After ten o'clock, yes.

Q. What did you say when he made this whispered comment?

A. I don't remember what I did say. I didn't take much stock in it.

Q. Because you realized that she wasn't yet coming?

A. I knew she would come somewhere about midnight. I was pretty sure she would come about midnight. [2770—1939]

(Testimony of J. R. Macaulay.)

Q. You were sure that he was incorrect in his judgment that she was already coming?

A. Oh, no, I wouldn't say that; she might have been coming.

Q. Well, did you go out to investigate?

A. I went out directly afterwards.

Q. How long afterwards?

A. About five minutes or so, probably. Maybe ten.

Q. Well, you couldn't have regarded his observation as worth much if you waited ten minutes.

A. I didn't take very much stock in it.

Q. As a matter of fact, you thought it was not so?

A. Well, I wouldn't go that far, but—

Q. Do you mean to say—

A. I knew there was no great hurry about rushing on deck because Captain Miller told me so.

Q. Do you mean to say that even if you took some stock, even though there might be a little in what Captain Miller said, that you would have stayed there for five or ten minutes without going out to see?

A. Probably if I had taken very much stock in it I would have gone a little quicker, I suppose.

Q. Wouldn't you have gone immediately if you had taken any stock at all?

A. If I was positive that the ship was afloat I would have gone quicker.

Q. And that's all you'll say about the matter?

A. That's all.

Q. So, even if you did take some stock in what Captain Miller said, you would have stayed there

(Testimony of J. R. Macaulay.)

five or ten minutes more without going out there to see, and you wouldn't have moved from your seat unless you were sure? A. No, it isn't at all sure.

Q. If you had even taken any stock in what he said, wouldn't you have gone out on deck?

A. I might.

Q. Wouldn't you have done so? [2771—1940]

A. I believe I would.

Q. So you didn't take any stock in what he said?

A. Not very much.

Q. If you had taken any stock in it you say and believe you would have gone out on deck to see if there was in fact, anything in it? If that was so, Captain, then you couldn't have taken any stock in it?

A. Not very much.

Q. Then you did take some stock in it?

A. I may have.

Q. Well, if you did, Captain, wouldn't you have gone up on deck to see?

A. It all depends on the amount of stock.

Q. That's the closest you'll testify?

A. That is the closest I'll assume to testify without risk.

Q. State whether or not, according to your present recollection, you took any stock whatever in what Captain Miller said. A. I certainly did.

Q. You did? A. Sure!

Q. Having taken some stock in what Captain Miller said there, are you prepared to say that you nevertheless stayed there five or ten minutes more without going out to see whether or not there was anything in it.

(Testimony of J. R. Macaulay.)

Mr. WARREN.—Object to the question; it has been asked and answered.

The COURT.—Overrule the objection.

Q. Answer the question, Captain?

A. What is the question?

(Question read.)

A. Yes, I did state there was five or ten minutes more.

Q. And what were you doing during that five or ten minutes?

A. I was talking with Captain Henry.

Q. What about? A. About the ship generally.

Q. You had already made the calculation?

A. We had.

Q. Which showed to you, which convinced you that a certain [2772—1941] amount of lightening more and she would float upon the tide coming in? She would have floated? A. Yes.

Q. Now, did you tell Captain Henry anything about this comment in which you did take some stock on the part of Captain Miller?

A. Yes, I believe I did.

Q. What did you tell him?

A. I said, "Let's go on deck and see what's doing."

Q. When? A. At that time.

Q. Immediately? A. Immediately.

Q. Did he demur?

A. We both went on deck together.

Q. That was about five or ten minutes after?

A. About.

Q. I'm asking if you said anything at the time.

(Testimony of J. R. Macaulay.)

A. Directly after.

Q. What did you say? A. Let's go on deck.

Q. How long after the time?

A. About five minutes or so.

Q. I want to know whether you said anything to him immediately afterwards? A. That was all.

Q. You refer to a lapse of five minutes between two events those making those events concurrent.

A. I didn't say it was five minutes?

Q. How long was that? A. Directly.

Q. By directly do you mean that you once rushed to Captain Henry and told him what Captain Miller had told you? A. No.

Q. What did you say?

A. I waited until Captain Miller went on deck, then I told Captain Henry, "Let's go on deck."

Q. How long after Captain Miller had spoken was it that Captain Miller went on deck?

A. About two or three minutes.

Q. What did you say?

A. I said, "Let's go on deck."

Q. Did you tell him anything about this statement of Captain [2773—1942] Miller's?

A. I didn't consider it necessary.

Q. I want to know whether or not you did or whether or not you didn't.

A. I can't remember exactly any particular thing that passed by years ago between Captain Henry and I.

Q. Didn't you say just a few minutes ago that you didn't tell Captain Henry anything about what Captain Miller had told you?

(Testimony of J. R. Macaulay.)

A. I said to Henry, "Henry, let's go on deck," and so that ended it.

Q. It was five or ten minutes after Captain Miller had spoken to you?

A. Might have been five minutes, might have been ten minutes; we didn't rush on deck.

Q. Before Captain Miller got into the cabin again?

A. That I don't know.

Q. Well, you were down there.

A. No, I do not believe he was.

Q. Isn't the fact, Captain Macaulay, that at one time during the period you were down in the cabin eating sandwiches, Captain Miller, having been in the cabin awhile, went out on deck and came back again?

A. No, I don't remember that.

Q. You don't remember. Didn't you realize, Captain Macaulay, that it was pretty important that if the "Celtic Chief" was actually moving, someone ought to get the "Arcona" steaming up on her wires, pulling up on her wires and having all of the force possible operating?

A. I had nothing at all to do with the "Arcona" or any of the other vessels. I was there simply to do my share of it.

Q. Haven't you testified that you wanted to do everything in your power to get the "Celtic Chief" off?

A. I did do everything in my power.

Q. Yet you waited for five or ten minutes before suggesting to Captain Henry what Captain Miller had told you. Do you know anything that the "Arcona" was doing? [2774—1943]

(Testimony of J. R. Macaulay.)

A. I don't know what they were doing on the "Arcona."

Q. As far as you know she was pulling?

A. I already supposed that the "Arcona" was to take the vessel after she was floated to an anchorage and I supposed she would be ready in order to take it.

Q. You didn't expect the "Arcona" to do any pulling? A. I did.

Q. Before the "Celtic Chief" came off?

A. Sure, that's what she was there for.

Q. When, Captain Miller had suggested to you or told you that he thought that the "Celtic Chief" was beginning to come, you having taken some stock in that, believing there might be something in it, although you knew the "Arcona" had not been doing anything up to that time, and you supposed that even during the period you were in the cabin that she was doing nothing, didn't it appeal to you as being something within your duty to go up on deck and get the signals made to the "Arcona"?

A. No, not my duty at all.

Q. Don't you think it was a wise thing to do?

A. No, I don't so consider it.

Q. You don't think it was a wise thing even if the "Celtic Chief" was moving? A. No.

Q. In other words, as far as you were concerned, you thought it was just as well not to have the "Arcona" doing anything?

A. I supposed that the "Arcona" was there to do her share.

Q. Will you kindly answer my question?

(Testimony of J. R. Macaulay.)

A. What is your question?

(Question read.)

A. I didn't think so at all.

Q. Didn't you—don't you know, Captain Macaulay, that the moment that the "Celtic Chief" began to move that her safety was insured that much more by the amount of additional power that was being exerted upon her? Don't you know that?

A. No, I don't know that.

Mr. WARREN.—One moment, Captain. I object to this as improper recross. [2775—1944]

The COURT.—I allow the question.

Q. You have answered that question, have you?

A. What was the question?

(Question read.)

Q. So, Captain Macaulay, you didn't and you don't now think that a vessel situated as the "Celtic Chief" was would be more apt to be floated if the "Arcona" had been pulling with all her might at the time that she began to come?

Mr. WARREN.—I object to the question as asked and answered and improper recross.

Mr. OLSON.—I'll withdraw my question and go on with something else. Now, Captain Macaulay, do you know what the length of the "Arcona's" wires were?

Mr. WARREN.—I object to that as improper recross, your Honor.

Mr. OLSON.—I withdraw my question. Did you state at all on direct examination that the "Arcona's" wires were seven or eight hundred feet long?

Mr. WARREN.—Same objection, your Honor, not

(Testimony of J. R. Macaulay.)

proper recross-examination.

The COURT.—I allow the question.

Q. Answer the question, Captain.

A. What was the question?

(Question read.)

A. No, I don't believe I did.

Q. Well, what did you say as to the length?

Mr. WARREN.—Same objection, your Honor.

Mr. OLSON.—All right, I'll ask the record be searched to find out what the length of that wire was. I ask to have the witness excluded from the courtroom during this argument.

Mr. WARREN.—I am not going to state any of the evidence and the request is improper and I object to it.

The COURT.—Very well. You will step into that room, Captain. (Indicating.)

(Witness resumes stand.)

The COURT.—I allow the question.

(Question read.)

A. To the best of my knowledge and belief, the length of the "Arcona's" line to the "Celtic Chief" was approximately about, [2776—1945] somewhere about five hundred feet.

Q. So that four hundred feet of that line was underneath the water and a hundred, that is, four hundred feet of each of those lines was under the water and about a hundred out of it?

A. About that.

Q. And that was what you meant, was it, when you testified previously that during the last half hour or so before the "Celtic Chief" came off, the

(Testimony of J. R. Macaulay.)

"Arcona's" lines were dipping somewhat in the middle into the water. That's what you meant, was it, that four hundred feet was underneath and a hundred out? A. About that.

Q. So it would be most of the line instead of a little? A. Most of the line.

Q. And you never meant to testify that only a small portion of the line was in the water?

A. I wouldn't call it a small portion.

Q. You never so testified at any time?

A. I testified that the middle of the line was under the water.

Q. But you did not testify that a small portion of the middle or a small portion of the line was in the water?

A. I don't remember of testifying to that effect.

Mr. OLSON.—That's all.

Redirect by Mr. WARREN.

Q. On cross-examination, Captain, you testified as to having seen the splash when the "Arcona's" anchor was dropped. How high was that splash as near as you could see from where you were?

A. Oh, I couldn't state the height of the splash. Just an ordinary splash of a heavy object dropped into the water. It might have been a few feet.

Q. Now, in answer to counsel's question of why could not the shore boats have gone around the bow of the "Celtic Chief" instead of going as they did to take their cargos to the [2777—1946] Inter-Island steamers, you said there was no difference appreciable, no difference until you approached the bow and then you got to the other side and you in-

(Testimony of J. R. Macaulay.)

creased the distance and did less and increased the danger. What increase of danger would there be in going around the bow?

Mr. OLSON.—Object to that as an improper statement of the testimony.

The COURT.—I allow the question.

A. What is the question?

(Question read.)

Q. What increase of danger would there be by the boat going around the bow as counsel said, 60 feet forward of the bow?

A. The difference in the danger would be increasing; the time that you would be outside the line of progress would be more.

Q. Danger of what?

A. Danger of the boat and the cargo. The shorter the distance from the larger vicinity of the reef, the less time it would take to get over that danger.

Mr. WARREN.—That's all.

Mr. OLSON.—Q. How were you able to determine what was the height of the splash from the "Arcona's" anchor?

Mr. WARREN.—Object to the question. The witness has answered that he didn't know the height. [2778—1947]

Tuesday, October 17, 1911.

Mr. WARREN.—Captain Piltz will be in port until Friday and for that reason we would like to take him off and put on this morning Captain Tullet, who will be here all of to-day.

[Testimony of Albert Tullet, for Libelants.]

Direct examination of ALBERT TULLET, a witness called on behalf of Libellants Inter-Island Steam Navigation Co. and Matson Navigation Co. and sworn.

Mr. WARREN.—Q. What is your age, Captain?

A. Forty-two.

Q. And your present occupation?

A. Master mariner.

Q. What was your employment in December, 1909? A. Master mariner.

Q. In connection with what vessel?

A. "Mikahala."

Q. And what company?

A. Inter-Island Steam Navigation Co.

Q. What has been your experience at sea as to number of years? A. Twenty-seven years.

Q. What kind of vessels? A. Sail and steam.

Q. How long have you been a master mariner.

A. A little over fifteen years.

Q. And prior to that in what capacity did you serve?

A. Chief officer, second officer, third officer, and apprentice.

Q. Where have you spent this service?

A. All parts of the world.

Q. How much of it in the Hawaiian Islands?

A. Twenty years. [2779—1948]

Q. And how long have you been in the Inter-Island service? A. Twenty years.

Q. What experience, if any, have you had in towing of vessels and otherwise handling them?

(Testimony of Albert Tullet.)

A. I've towed vessels in and out of port; I've towed them across the channels and handled vessels in tow under a good many circumstances. I've towed vessels twice from one Island to another, from Kauai to Oahu.

Q. Have you had any experience in the salvage of vessels? A. Yes, sir.

Q. State, if you remember, the first instance.

A. The first instance in the Hawaiian waters was the "Kilauea," then the ———, the "Sheridan," the "Chiyo Maru," the "Celtic Chief," and there are probably others I don't call to mind; also one of our Island vessels that I aided in salving, the "Kaala."

Q. Were each of these vessels ashore?

A. Yes, sir.

Q. And do you know personally of the operations at these different vessels you have just mentioned?

A. Yes, I was personally engaged in the operations.

Q. In all of the instances?

A. In all of these instances.

Q. Now, at the "Celtic Chief," you were in attendance at the operations of the "Celtic Chief" with the "Mikahala"?

A. I was in command of the "Mikahala."

Q. Beginning on the morning of December 6th?

A. Yes.

Q. And extending from that time until the "Celtic Chief" was floated? A. Yes, sir.

Q. And do you know the various positions of the vessels that were there at the time?

A. Approximately, yes.

(Testimony of Albert Tullet.)

Q. Directing your attention to Wednesday, December 8, that [2780—1949] being the day on the night of which she came off, I will ask you how many vessels were out there at the scene engaged in attempting to render assistance to the "Celtic Chief"?

A. Four.

Q. Will you name them, please?

A. "Likelike," "Helene," "Arcona," "Mikahala."

Q. Do you know the "Intrepid"?

A. The "Intrepid" was not there at that time.

Q. To what do you refer to now, Wednesday?

A. Wednesday night.

Q. Wednesday night? A. When she came off.

Q. Was she there at all on Wednesday?

A. Yes, she was there in the forenoon.

Q. I'd like to have you make a sketch, Captain, of the different, the position of the "Celtic Chief" and the several vessels as of Wednesday afternoon and Wednesday night.

A. Where do you want me to do it.

Q. You can come right down here, please.

Mr. OLSON.—I'd like to ask if this is for the purpose of bringing out some particular point.

Mr. WARREN.—I'm not intending to go into the whole case again with Captain Tullet but there is a special part of it that I wish to direct this witness' testimony to.

Will you kindly draw, Captain, the "Celtic Chief"? You have done so? A. I have.

Q. Will you mark that C. C.?

(Witness marks on drawing just made.)

(Testimony of Albert Tullet.)

Q. Will you now draw the relative positions of the "Mikahala"?

(Witness draws.)

Q. Will you mark that vessel, "Mikahala"?

(Witness marks on drawing just made.)

Q. How many lines did the "Mikahala" have, Captain, on Wednesday?

A. On Wednesday she had two. [2781—1950]

Q. Will you draw the two lines?

A. (Witness draws.) This is not being drawn with any idea to scale. This is being drawn as my memory serves me. For instance, the length of the ship and the length of this line may be altogether out.

Q. Showing just the relative positions?

A. Just the relative positions to show the position from the ship.

Q. Have you drawn two lines from the "Mikahala" to the "Celtic Chief"? A. Yes.

Q. What is this attached to one of them?

A. Simply an affair from one side of the vessel so as—

Q. Of the "Mikahala"?

A. The "Mikahala," to equalize the strain of the vessel.

Q. Now, draw the relative position of the "Arcona," please.

(Witness draws.)

Q. You have now drawn the position of the "Arcona"? A. Yes.

Q. Will you mark it "Arcona"?

A. "Arcona." (Witness marks on drawing.)

(Testimony of Albert Tullet.)

Q. How many lines did the "Arcona" have?

A. Two.

Q. Will you draw the two, please?

A. (Witness draws.) One went here one went up there.

Q. Will you mark that "Helene"?

(Witness marks.)

Q. And you have shown the line of the "Helene"?

A. Yes, sir.

Q. To the "Celtic Chief"? A. Yes.

Q. Now, the "Mikahala," please.

(Witness draws.)

Q. Will you mark that "Mikahala"? [2782—1951]

(Witness marks.)

Q. You have also shown the "Mikahala" line to the "Celtic Chief"? A. Yes, sir.

Q. Did the "Mikahala" have any anchor?

A. Yes, sir.

Q. Will you indicate where her anchor lay?

(Witness draws.)

Q. And connect that anchor with the "Celtic Chief," with the "Mikahala."

(Witness draws.)

Q. Do you know whether the "Arcona" had any anchor or anchors? A. Yes, I saw the anchor.

Q. Do you know where that anchor was?

A. Yes, sir.

Q. Will you indicate that on this drawing? This is with reference to Wednesday afternoon and evening? A. Yes.

(Witness draws.)

(Testimony of Albert Tullet.)

Q. You have now drawn the anchor of the "Arcona"? A. Yes.

Q. And the line connecting her anchor to the vessel? A. Yes, sir.

Q. Did she have any other anchors?

A. The "Arcona"?

Q. Yes. A. No, sir, not in the water.

Q. The "Helene" have any anchors?

A. The "Helene"? I couldn't see. I think she had two anchors on her. She had two anchors.

Mr. OLSON.—Move to strike the last answer of the witness on the ground that it appears it is hearsay.

The COURT.—Motion granted.

Q. The "Likelike"?

A. Yes, I saw her anchor down.

Q. Will you indicate where her anchor was?

(Witness draws.)

Mr. WARREN.—That is all as to the sketch, I think. I guess [2783—1952] I will, at this time, ask to have the sketch just made by the witness Tullet received in evidence.

The COURT.—It may be received.

(Sketch received in evidence and marked Libelee's Exhibit "H," Inter-Island and Matson Navigation Co., Captain Tullet's Testimony.)

Q. What was the object of the "Mikahala" anchor, Captain?

A. To keep the vessel to windward against the tide and swell; simply to maintain the position.

Q. What was done by the "Mikahala" Wednesday afternoon and evening, Captain, up to the time

(Testimony of Albert Tullet.)

the ship came off?

A. We were pulling on the hawsers attached to the "Celtic Chief."

Q. Will you describe her operations? Describe particularly just what the "Mikahala" did. How she pulled and as to her lines.

A. Her lines were taut at all times during the pulling operations; we simply reduced speed sufficient to relieve the strain during the times of low water and always at high water maintained full speed. We had, Wednesday night we hooked her on to full speed about eleven o'clock. I think about eleven o'clock, approximately. I couldn't say the exact minute, but the speed was never reduced more than a quarter simply to relieve the strain on the hawsers.

Q. How frequently did you observe the line of the "Mikahala" *particular* during Wednesday evening and night? A. Frequently, all the time.

Q. Did you observe the lines of the "Helene" and "Likelike"? A. Yes, sir.

Q. Wednesday night? A. Night, yes, sir.

Q. How were they?

A. There were sometimes during the night that I couldn't see them, of course, but at all times when there was light enough to view them, I saw them.

Q. At what time was it dark?

A. It was dark up to about, I think they threw on the electric [2784—1953] lights about eleven o'clock; after that time I could view them.

Q. From the time the electric light came on about eleven o'clock, did you—how frequently did you ob-

(Testimony of Albert Tullet.)

serve the lines of the "Helene" and "Likelike"?

A. Practically all the time. I was on my bridge all the time and they were in my view all the time.

Q. Describe their appearance and position during that last hour. A. Perfectly tight.

Q. What time did the "Arcona" come out, Captain? A. Did she come out?

Q. Yes.

A. About eleven o'clock in the forenoon.

Q. Of Wednesday? A. Wednesday, yes.

Q. Describe her operations. What did she do *on* first come out?

A. She came out and dropped her anchor almost directly ahead of the "Celtic Chief."

Q. I'd like to ask you, at this time, to indicate on the sketch you have just made, Libellant's Exhibit "H," Captain Tullet, the place where the "Arcona" dropped her anchor, as you've just stated.

A. Just mark a cross or draw an anchor?

Q. Draw an anchor.

A. I made a cross because I couldn't tell exactly how the anchor laid on the bottom.

Q. All right, make a cross.

A. Draw that "Arcona's" anchor.

Q. I'll ask you first, having dropped this anchor in that position what did she next do?

A. She began to swing around, the vessel began to swing around to her anchor and she got away down here close to the "Helene" and then she pulled her anchor up again.

Q. How did she do that?

A. She hove up that windlass.

(Testimony of Albert Tullet.)

Q. And what then did she do?

A. She steamed up in position here. [2785—
1954]

Q. They picked up the anchor you have already drawn? A. Yes.

Q. Now, I'll ask you to put a figure one by the cross which indicates the position of the "Arcona's" anchor as first dropped and put a figure two by the anchor which you've just drawn indicating her second position.

(Witness marks.)

Q. That is correct, is it? A. Yes.

Q. Now, what did the "Arcona" then do?

A. She then run a small line to the "Celtic Chief."

Q. What kind of a line?

A. Well, it looked like first of all she run a manilla line to heave the vessel into position. Then she run a small one on judging from looking at it from my vessel, it was about a two-inch wire, and after she had that fast she steamed ahead on her engines and it broke in about the middle. I should judge she made six or seven revolutions and then broke this line.

Q. About what time of night or day was it that she broke that wire?

A. I should judge it was around about twelve o'clock—between twelve and one, perhaps. I couldn't state positively, what time it was.

Q. Do you know what was the condition of the tide at that time?

A. The tide was at high water.

Q. Now, when she dropped her anchor the second

(Testimony of Albert Tullet.)

time in what position was she headed?

A. After she got into position, do you mean?

Q. Now, first she broke one. She broke it.

A. When she broke it I should judge she was heading about east when she steamed up to drop her anchor.

Q. Then, having dropped it and swung back, how was she heading when she took up the position which you have indicated on this sketch?

A. As near as I could judge she would be heading about south by east; about south by east quarter. Perhaps she was heading a little bit to the eastward, [2786—1955] to the "Celtic Chief."

Q. As indicated by this sketch? A. Yes.

Q. When she took up the position indicated on this sketch, did she change her position in any way?

A. No, sir.

Q. During the operations? A. No, sir.

Q. Well, having broken the wire, what did she next do?

A. She ran two small lines and ran a big wire hawser and she spent quite a long time on that.

Q. How long?

A. I should judge about three hours. She made about three attempts and each time it got fouled off the bottom and they would break the line that they were heaving on board the ship and they finally gave it up and went out on the "Arcona" again.

Q. About what time in the afternoon?

A. I should judge about between three and four.

Q. Then you saw them run two wires?

A. They ran two small wires.

Q. Did you examine the wires yourself?

(Testimony of Albert Tullet.)

A. No, sir, I only know about them from my ship.

Q. About what time did they get those wires fast between the two vessels?

A. I should judge they got those wires fast a little after six o'clock, I think.

Q. And what—

A. Between six and seven. I don't remember the exact times. I didn't take any notice of the exact times. It was between six and seven.

Q. Having gotten those two lines fast, what did she then do?

A. She didn't do anything after that.

Q. What was the position of those two lines when they were so attached?

A. One was on the starboard side and one was on the port side.

Q. Of what?

A. Of the "Celtic Chief." One [2787—1956] ran over my line and went into the midship chock on the starboard side. That I could see distinctly. The reason I remember it so distinctly is because I had to send my chief officer to parcel it to keep it from chafing. I sent my chief officer to parcel the lines when this wire hawser was chafing them.

Q. Do you know the way they were attached to the "Celtic Chief"? Indicate their position as respects the water line.

A. The only one I could see from the "Celtic Chief" was the one on the starboard side that came from the midship chock along the side of the vessel over my line and then dropped down into the water.

Q. The other line you say you couldn't see at the "Celtic Chief."

(Testimony of Albert Tullet.)

Mr. OLSON.—I object—

A. I did not see the line on the port side of the “Celtic Chief.”

Q. Did you observe her lines at her own stern?

A. Yes, sir.

Q. What was their position there?

A. Their position there was very similar to the line that I saw leading from the “Celtic Chief.” It dropped down from the stern in the water probably about forty or fifty feet from the ship.

Q. At the “Arcona” end? A. Yes, sir.

Q. Approximately how much of the line out at the “Celtic Chief” end, the one that you saw?

A. I should say after it crossed my line where it dropped into the water there wouldn’t be more than thirty feet in view. Thirty feet of the line in view.

Q. How frequently did you observe the “Arcona’s” lines that evening after the two were made fast?

A. I observed them when the electric light came on. They were in the same position then as they were before.

Q. At which end?

A. The “Celtic Chief” end. [2788—1957]

Q. Could you observe them at the “Arcona” end?

A. No, sir.

Q. And after the light came on did you, how frequently did you observe them?

A. All the time I was on my bridge; all the time that night.

Q. Was there, at any time, any change in the position of those lines at either end? A. No, sir.

(Testimony of Albert Tullet.)

Q. Did you observe them at the "Arcona" end after the light came on? A. No, sir, I did not.

Q. How many lines, after the light came on, how many "Arcona" lines could you see at the "Celtic Chief" end?

A. One; only the one on the starboard side.

Q. Do you know whether or not, at any time, during that evening, the lines of the "Arcona" were taut?

Mr. OLSON.—Just a moment. I object on the ground it appears the witness is not qualified to answer.

Mr. WARREN.—I now request your Honor to ask the witness to be excused to allow me to respond to the Court.

The COURT.—You may withdraw, Captain Tullet, in the room across the way.

(Witness leaves stand.)

Mr. OLSON.—I wish now to add to the objection that it's leading. I wish to add further it appearing from counsel's statement that he wishes to show by this witness that these lines were not taut because the propellers were not moving, therefore it's calling for a conclusion of the witness.

The COURT.—I think it does suggest the answer to the question. On that ground it is objectionable; I sustain the objection.

(Witness resumes stand.)

Q. Captain, you having described the position of the "Arcona" lines, up to between six and seven o'clock in the evening when she got them both attached to the ship and later observed the starboard,

(Testimony of Albert Tullet.)

the line to the starboard quarter after the searchlight went on in the same position as it was previously [2789—1958] I will ask you if you know whether or not during the entire evening, that is, including the hour when it was dark, if you know whether or not there was any change at all in the position of either of the “Arcona’s” lines.

Mr. OLSON.—I object to the question on the ground that it already appears that this witness does not know and cannot know the condition of those lines.

The COURT.—The objection is overruled.

Mr. OLSON.—I ask that the witness be instructed to confine his answer to yes or no.

The COURT.—I don’t think we can assume the witness is going to; I’ll not interfere with the witness’ answer.

A. There was no change in the position.

Mr. OLSON.—I move to strike on the ground it is not responsive.

The COURT.—It simply saves a step, Mr. Olson,

Mr. OLSON.—I move to strike then further on the ground that it appears that the witness is not qualified to answer. Does your Honor deny the motion?

The COURT.—I do, yes.

Q. How do you know, Captain, that there was no change at all in those lines?

A. Because had there been any change the position of the “Arcona” certainly would have changed with it.

Q. Why?

(Testimony of Albert Tullet.)

A. Because the "Arcona's" anchor was cast off her bow. Her lines up to that time had been taut sufficient to keep her in that position. It would not have made any difference if she had slacked the port line, but had she left them taut, a change in the position of the "Arcona" certainly would have taken place and the "Arcona" would have come closer to the "Mikahala."

Mr. OLSON.—I move to strike on the ground it appears it is merely a conclusion of the witness.

Mr. WARREN.—Will your Honor rule on the objection? [2790—1959]

Mr. OLSON.—My motion is to strike the answer of the witness that there was no change in the condition of those lines.

Mr. WARREN.—That's a different motion, your Honor.

Mr. OLSON.—That's the motion that I made, on the ground it is a conclusion of the witness.

The COURT.—In one way of looking at this it amounts to the answer of an experienced seaman as to what the effect would be if there was strain put on the line. That is to say, that the ship would come over.

The motion is denied. This same thing can be brought out in another way.

Q. Captain, any other reason than that you have just mentioned why you know the "Arcona's" lines were not taut at any time that night?

A. Outside of the reason that I have just stated, if there had been any work on her lines on board the ship, I was observing the "Arcona" and the "Celtic

(Testimony of Albert Tullet.)

Chief" the whole time from dark until the ship finally came off, I certainly would have seen them working their lines, and the only possible difference on the lines that could have taken place would have been the slack of the lines. There was no possible chance of the lines coming tighter without the relative positions of my vessel and the "Arcona" changing that I can state positively and prove it.

Q. Do you know whether or not the "Arcona" used her propeller at any time? A. She did not.

Q. How do you know that?

A. Because I was close enough to the ship so that I could have seen the motion of the water.

Q. Then before the time when the search-light went on, in the forenoon when she broke her first line, it was from pulling or the use of her propeller. What effect, in your judgment, would heaving by the "Arcona" on her anchor lines have had upon the vessel itself?

A. Upon the "Arcona"? [2791—1960]

Q. Yes.

A. It would have brought the "Arcona" closer to the "Mikahala."

Q. How close?

A. It would depend how long she would heave. If she hove until she got her lines taut to the "Celtic Chief," she would foul the "Mikahala."

Q. About what time, to your best recollection, did the "Celtic Chief" come off the reef?

A. Twenty minutes past twelve. That is that's when my lines were cut. She started to come off, started to move, at quarter to twelve.

(Testimony of Albert Tullet.)

Q. Now, do you know anything of—I withdraw that. Will you describe particularly what took place in connection with the "Mikahala" during the time following eleven o'clock when the search-light went on up to the end of the "Arcona's" proceedings that night, giving in detail, as near as you can.

Mr. OLSON.—From when?

Mr. WARREN.—From the time that the light went on until she was finally off?

A. The operations of the "Mikahala."

Q. The "Mikahala."

A. The "Mikahala" started to pull full speed at half-past eleven, at quarter to twelve when I realized the ship was beginning to move. My men had been ordered to stand by the stations. Some were stationed at the anchor, some were stationed at the lines. At quarter to twelve I gave the order.

Q. Did you heave up the anchor?

A. I hove up the anchor until she took a turn around the weather bit and broke it.

Q. Why?

A. To be clear of the "Arcona." I broke my anchor purposely.

Q. Then what did the "Mikahala" do?

A. Then the "Mikahala," as the ship came off, cut away her starboard hawser and put the wheel hard starboard and steamed full speed at right angles to the "Celtic Chief" to pull her clear of the "Arcona." [2792—1961]

Q. What direction did the "Celtic Chief" take as she came off the reef, as she moved away?

A. When she first started to move off, she came

(Testimony of Albert Tullet.)

directly astern and I saw there was going to be a collision between the two vessels. She was closing the gap between the "Celtic Chief" and the "Arcona" so rapidly that caused me to pull with all our power at right angles to the vessel to pull her clear and also to take her sternway and avoid a collision between the "Arcona" and the "Celtic Chief."

Q. How near did the "Celtic Chief" actually approach the "Arcona" under the conditions just mentioned?

A. From the position on my vessel on the bridge, I should judge about twenty feet when the "Arcona" then began to move.

Q. In your experience as a seaman and navigator, taking into consideration the distance between the "Celtic Chief" and the "Arcona," the direction the "Celtic Chief" was moving and her rate of speed, can you say how near she would have approached the "Arcona" without the interference of a steady pull from the "Mikahala"?

A. I certainly believe that there would have been a collision.

Q. Could the "Arcona" have gotten a strain on her lines or either of them at any time that night without your having known it? A. No.

Q. Referring to the lightering operations, Captain, by the "Mikahala" and "Helene" and their boats, will you describe the conditions under which those boats worked with respect to the "Celtic Chief" particularly?

A. The conditions at the time when we commenced to lighter fertilizer from the "Celtic Chief"?

(Testimony of Albert Tullet.)

There was a heavy southeast swell running and it was extremely dangerous to our men in the boats and also to the boats in lightering.

Mr. OLSON.—Just a moment. I move to strike the last statement of the witness on the ground it is his conclusion.

The COURT.—Objection is overruled. [2793—1962]

Mr. WARREN.—In what way was it dangerous for the boats to operate in unloading at the "Celtic Chief"?

A. The danger was the boats were loading on this heavy swell with a half a ton or perhaps more fertilizer hanging over their heads, the boat would rise from twelve to fifteen feet on the swell and there was more danger of the boat coming up under this load, which was almost the same as the load dropping.

Q. Any other danger?

A. The danger if it was driven against the ship and smashing the boat.

Q. Any other danger—I withdraw that last question. How would the boats be driven against the side of the ship?

A. By the force of the swell. The ship was stationary like a stone wall. The boat had to take the full force of the swell. There was no motion of the vessel. The boat was driven against the ship's side.

Q. On how many sides did the boats operate?

A. The "Mikahala's" boats operated while lightering fertilizer into the "Mikahala" on the starboard side of the "Celtic Chief."

Q. And the "Helene's" boats?

A. Well, they were working the "Mikahala" also,

(Testimony of Albert Tullet.)

on the starboard side.

Q. Was there any loading done to the "Mikahala" from the port side? A. Beg pardon?

Q. Was there any loading done to the "Mikahala" from the port side of the "Celtic Chief"?

A. No, sir.

Q. What were the conditions on the port side of the "Celtic Chief"?

Mr. OLSON.—Object unless it appears that the witness is qualified to testify.

Q. Do you know, Captain, what the conditions were on both sides of the "Celtic Chief"?

A. No, sir. It was not on the port side there out of my view.

Q. Only on the starboard side as far as you could see? A. As far as I could see from where I was.

Q. How long did the boats operate, Captain, unloading? [2794—1963]

A. They commenced on the first day about half-past ten.

Q. What day was that? A. Tuesday.

Q. Tuesday?

A. Yes, sir. They worked till two o'clock, the following morning, with only sufficient time to obtain their meals during that time.

Q. After that?

A. Then they were given a rest and started again at half-past five in the morning and worked that day up to about eleven o'clock or a little after, perhaps, on Wednesday.

Q. Now, any difference in the operations in daylight and darkness so far as danger was concerned?

A. The danger was greater during the darkness.

(Testimony of Albert Tullet.)

Q. Why?

A. Because the men could not see and the fertilizer was swung out over their heads and all the time the boats were rising and falling on these big swells. It certainly made it very dangerous to the men in the boats.

Q. That's the danger to the men you have testified about? A. Yes.

Q. Were any lights used in the unloading operations at night? A. We have no search-light.

Q. I mean on the boats?

A. Oh, lamps, oil lamps.

Q. After the search-light went on that night, how many vessels were pulling on the "Celtic Chief"?

A. Three.

Q. Name them, please.

A. "Likelike," "Helene," "Mikahala."

Q. And at the time she came off, how many?

A. Three.

Q. The same? A. The same vessels.

Q. Immediately—I'll withdraw that. Referring, now, to the time that the ship came off and approached the "Arcona" and you say the "Arcona" started out, will you describe what the "Arcona" then did?

A. She started to heave on her anchor and then she started to tow the vessel stern first to [2795—1964] sea with the wire hawser that she had attached to her midship chock.

Q. Do you know how many wires there were attached then between the "Arcona" and the "Celtic Chief"?

A. No, I do not. I was very busily engaged on

(Testimony of Albert Tullet.)

my own vessel at that time. I saw the "Arcona" start away suddenly when I was expecting the collision to take place. The gap was closing rapidly and I was doing my damndest to take the ship, the "Celtic Chief," at the same time to draw her to one side of the "Arcona." Then all at once I saw the "Arcona" start to sea very quickly and the "Celtic Chief" behind her. Just at that moment my hawsers were cut on board the "Celtic Chief."

Q. Describe the motion of the "Celtic Chief" at about the time she began to first come off. How did she move?

A. She moved a little and then she stop and it was that that gave me the indications that she was coming off and I gave my orders to heave my anchor up. She'd move a little, then stop; then I could see she was coming again because I had a bearing of a light ashore, that point in Diamond Head here, and we were changing our positions after my anchor was up. I remember speaking to the mate at the time and said, "She's beginning to come."

Q. Was there any change in the relative positions of the "Mikahala" and "Arcona"?

A. Yes, the "Mikahala" was out already and to the port side further when the "Arcona" was through heaving up the anchor, then as the "Celtic Chief" started to move we were getting near the "Arcona" in a horizontal way. That is the same as if we would be passing her.

Q. How far, what was the distance you moved that way in passing the "Arcona"?

A. I should judge perhaps half the length of the "Mikahala." Just as soon as I saw the ship afloat

(Testimony of Albert Tullet.)

I put my wheel hard on starboard and changed my course about eight points, eight or nine points, and veered first in an easterly direction and then more towards the north. [2796—1965]

Q. Prior to the "Celtic Chief" coming off, do you know of any motion on her part?

A. On the "Celtic Chief"?

Q. Yes. Other than moving toward the sea.

A. I could see the vessel kind of tremble like a vessel striking.

Q. Describe that.

A. In the rise and fall of the swell when the vessel would strike, she'd begin to tremble, her masts and yards would shake, showing that she was striking the bottom.

Q. Do you know how that was caused?

A. By striking the bottom. The vessel was then moving and rising on the swell.

Q. Was her motion a motion up and down?

A. Caused by the swell.

Q. How high would you say the swell was, Captain, saying during Wednesday?

A. I should judge they reached a maximum of at least fourteen feet.

Q. And during Wednesday evening?

A. Wednesday evening after it was dark I couldn't say.

Q. Taking the height of a swell, how did you measure that? A. Beg pardon?

Q. How can you measure the height of a swell?

A. How do I measure it?

Q. How do you judge it?

A. The height of the swell is judged on the object

(Testimony of Albert Tullet.)

where it first breaks. The height of the swell is the depth of the water that it breaks in. Outside of that we have no method of measuring it. For instance, if a swell was to break in ten fathoms of water, that sea would be sixty feet.

Q. Do you know of any special instances of where seas have broken during unloading operations of boats?

A. The sea broke right abreast of the ——— once.

Q. Any boat there at the time?

A. There was a scow. I think it was going to tear the scow [2797—1966] adrift.

Q. Do you know whether it broke more than once?

A. No, I didn't observe more than one time when it actually broke alongside the ship.

Q. Do you know approximately how high that was when it broke?

A. I should judge approximately it was about sixteen feet.

Q. Do you know the depth of the water there?

A. No, sir, I do not.

Q. What's that?

A. I do not. I was judging by the height the sea mounted the ship's side.

Q. How frequently would those larger swells come?

A. Well, as I stated before, I only saw one break, but there was frequently heavy swells from twelve to fourteen feet.

Q. Is there any difference in the height of a swell where it is moving along the sea and then breaks?

A. Yes.

Q. What?

(Testimony of Albert Tullet.)

A. It rises as soon as it strikes. The friction that takes place causes it to rise in the water. A body of water travelling when it strikes shallow water it rises and that's the reason. When the sea breaks the height of the sea has reached its maximum.

Q. Is there any difference in unloading a floating vessel and one that is stationary?

A. A great difference.

Q. What?

A. One is, a floating vessel gives with the sea; a stationary object, the boat has to take the full swell and all of its force. That's demonstrated many, many times in our experience in these islands. I can recite an instance of that. Two weeks ago the "Mauna Kea" and the "Claudine" and the —— wanted to land their passengers at the landing but they landed them without any danger on board of my ship. No danger whatever.

Q. From your experience as a mariner, will you say whether or not the Inter-Island vessels were in any danger in their operations [2798—1967] in connection with the "Celtic Chief"?

A. There was some danger, yes.

Q. What danger?

A. The danger was in the event of my hawsers breaking they might foul the propeller, and in that event there would be danger of collision between the "Mikahala" and the "Arcona" because with the propeller disabled, the vessel would swing around or go slow and then would crash into the "Arcona."

Q. What was the tendency of the tide or the water?

A. Setting to the westward and the swells from

(Testimony of Albert Tullet.)

the southwestward.

Q. How long would it take to stop the engine, to stop the propeller of a steamer? A. How long?

Q. Yes.

A. It would take first time for the officers to get the signal and the signal to the engineer would probably take under those conditions at least a minute or a minute and a half.

Q. How long would it take for a propeller to draw in the hawser?

A. It would depend upon how long the hawser was.

Q. Make any difference where she broke?

A. Yes, depends upon from where it broke. If it broke anywheres near the "Celtic Chief," there would be probably no danger, the weight of the hawser would keep it away from the propeller. If it should break near the "Mikahala," there would be danger of its bounding back and getting into the propeller almost instantly.

Q. If, to avoid the hawser being drawn in by the propeller, the propeller would stop, what then would be the condition of the steamer?

A. The steamer would be able to drift and you wouldn't be able to keep the engine stopped without danger of a collision with the "Arcona."

Q. How about the other vessels, the "Helene" and the "Likelike"?

A. With the position of the "Helene" and the "Likelike," the "Helene" [2799—1968] might possibly swing clear of the "Likelike." I wouldn't be able to judge exactly in regards to her position. I think the "Helene" would perhaps swing clear of the "Likelike" in the event of her hawser breaking.

(Testimony of Albert Tullet.)

In regard to the "Arcona," I think that she would perhaps swing clear of the "Helene."

Q. If her line broke? A. If her line broke.

Q. Well?

A. The position that I was in I didn't have a position to exactly judge their distances between one another, only by guessing at it, so I couldn't state positively whether there was any danger to them or not.

Q. The "Helene" and "Likelike"?

A. The "Helene" and "Likelike."

Q. From your experience as a mariner and in connection with salvage operations, would you say whether or not the "Celtic Chief" was in any danger by reason of her position on the reef?

A. She was in great danger.

Q. From what?

A. Danger from the swells setting her around and perhaps taking the whole side out of her.

Q. Which side?

A. Well, which ever side she would set around on. In this instance the swells were striking her on the starboard quarter. It would set her around on her port bilge. The swells would tend to send and lay her on her port bilge.

Q. How with the vessels pulling on her?

A. What was the danger?

Q. Yes.

A. Well, danger of a storm coming up and the sea getting higher and destroying the vessel. There was that danger existing all the time.

Q. What part—the Miller anchor, Captain, did you observe that? A. Yes, sir, I did.

(Testimony of Albert Tullet.)

Q. At what times?

A. Only during the time it was light. I observed it both before dark and after the electric light came on.

Q. Well, up to the time that it got dark, describe the positions [2800—1969] of the Miller anchor-line.

A. The position from the “Celtic Chief” was that it looked to me as if it was only the weight of the line, the only strain on it was the weight of the line. At that time I don’t know what they were doing on board the ship.

Q. I’m directing your attention to the line as it came over the stern of the “Celtic Chief.”

A. Well, it came over the stern and entered the water in a slack condition.

Q. About how many feet of that line would you say there were from the point where it came over the stern to the place it entered the water?

A. I should judge between thirty and forty feet.

Q. And now after the—from the time it got dark until the search-light went on, you didn’t observe that line? A. No, sir.

Q. After the search-light went on you say you observed it? A. Yes, I saw it again.

Q. And what was its position then?

A. It’s position was about the same.

Q. Do you know whether or not there was any change in the position of that line from the time the search-light was on and up to the time the vessel came off?

A. No, I didn’t observe any change in the line.

Q. Had there been any change would you have

(Testimony of Albert Tullet.)

known it? A. Yes, I would.

Q. Just how did that search-light appear? Where was it thrown?

A. The search-light was used from the "Arcona" and thrown on the "Celtic Chief."

Q. How thrown on the "Celtic Chief," that is, what parts of it?

A. My recollection is that the whole ship was lit up by it.

Q. Where would you say would be approximately the center of the shining of the light? Where would that strike?

A. That I wouldn't say. I don't remember.
[2801—1970]

Q. Approximately how much anchor-chain did the "Mikahala" have out?

A. About twenty-five fathoms.

Q. Twenty-five?

A. Twenty-five or thirty fathoms.

Q. How much did you get in before you broke your chain?

A. We broke the chain about six or seven fathoms from the anchor. The anchor got foul of the hawsers and we couldn't get it up any further so I broke it purposely.

Recess.

Q. Captain, do you know of any photographs in connection with the operations of the "Celtic Chief"? A. Yes.

Q. Who took them?

A. I took them myself.

Q. I show you four prints indicating them to be enlargements, and ask you if you've seen these be-

(Testimony of Albert Tullet.)

fore and can identify them?

A. Yes, those are enlargements from the originals that I took.

Q. Referring, now, I hand you one of these photographic prints and ask you to tell me what the vessels is there shown? A. "Celtic Chief."

Q. And two lines from the stern of the "Celtic Chief" are what lines, if you know?

A. The "Intrepid" and the "Helene."

Q. What time was that picture taken?

A. That was taken Tuesday morning around about eight or nine o'clock.

Q. Now, pointing to another line indicated as running past a small boat, what line is that?

A. "Mikahala's" line, "Mikahala's" hawser.

Q. Are there any other lines indicated on that picture?

A. No, sir. This is the "Intrepid." This is the "Helene."

Q. The outer one is the "Helene" line and the middle one the "Intrepid" and the one in the foreground the "Mikahala"?

Mr. OLSON.—Is that correct? [2802—1971]

A. The upper one, that starboard, "Mikahala"; center one, "Intrepid"; port one, "Helene."

Mr. WARREN.—I'd like to offer this.

The COURT.—It may be received.

(Photograph received in evidence and marked Libellants' Exhibit "I," Inter-Island and Matson Navigation Co., Captain Tullet's Testimony.)

Q. I hand you another and ask you if you can identify the vessels in this picture. A. Yes.

Q. What are they?

(Testimony of Albert Tullet.)

A. The "Intrepid" and "Mauna Kea." The one in the foreground is the "Intrepid" and the other one is the "Mauna Kea."

Q. What time was that taken?

A. That was taken sometime on Tuesday.

Q. Did you make any notes of the times these photographs were taken?

A. I made notes and furnished them to the person I gave these original copies to, Captain Haglund.

Q. And in whose handwriting are those notes on the back? A. I don't know.

Q. You don't recognize it?

A. No, they are not mine.

Mr. WARREN.—As far as this witness' testimony is concerned, the notations on the back are stricken from his testimony and are not to be taken as part of it.

The COURT.—So ordered.

Q. I hand you a third photograph, Captain. What vessel is there shown? A. "Celtic Chief."

Q. And what lines?

A. The "Intrepid," the "Helene," and "Mikahala's" lines.

Q. The "Intrepid" line being where?

A. In the middle, the center one.

Q. The "Helene's" being?

A. Port side of the "Celtic Chief."

Q. Do you know if the "Arcona's" line was shown? [2803—1972] A. No, sir.

Q. What is the small boat close alongside the "Celtic Chief" there? A. "Mikahala's" boat.

Q. The picture was taken when?

(Testimony of Albert Tullet.)

A. The picture was taken, I don't remember the exact time they were taken.

Q. What day?

A. I don't remember the day either. It was either Monday afternoon or Tuesday morning.

Q. Did you take any pictures on Wednesday?

A. Yes, sir.

Mr. WARREN.—I'd like to offer also this photograph, your Honor.

Q. I hand you a fourth photograph. That also is the "Celtic Chief"?

A. That's the "Celtic Chief," yes.

Q. What lines are there?

A. Lines from the "Likelike," the "Helene," the Miller anchor lines, the "Arcona's" lines. Doesn't show the "Mikahala's" line. It's too dim. The only lines shown are the "Arcona," "Helene," "Likelike," the Miller anchor line.

The COURT.—It may be received.

(Photograph received in evidence and marked Libellant's Exhibit "K.")

Q. The one going in the water near the ship?

A. Yes, the one, the line used by the "Arcona" in taking the other line on board.

Mr. OLSON.—That's the only line of the "Arcona"?

A. That is the other "Arcona" line over my line crossing the white streak.

Mr. WARREN.—Now, what two lines are furthest from this vessel, the upper heavier one is what line? A. "Helene."

Q. And the one coming from behind the vessel?

(Testimony of Albert Tullet.)

A. "Likelike." [2804—1973]

Q. Do you remember when this was taken?

A. That was taken Wednesday afternoon.

Mr. OLSON.—What time?

A. I don't remember the exact time. I didn't take the times when I took them by the clock.

Mr. WARREN.—I ask also to have this introduced.

(Photograph received in evidence and marked Libellants' Exhibit "N.")

Q. Now, Captain, referring to Libellants' Exhibit "K," and referring to the indication of the swell in that photograph, what, in your judgment, was the height of that particular swell at that time as here photographed? A. About twelve feet.

Q. How do you arrive at that distance?

A. Judging from the height it's mounting the vessel's side. I judge the height of the vessel's stern twenty feet above sea level, and measuring the distance of the swell mounting the ship's side will give the twelve feet, the height of the swell. You can measure it on the photograph by taking the height of the ship twenty feet above sea and the hawser line and with a pair of parallel rulers.

Q. What are these pencil marks?

A. That's where I measured it.

Q. How did the height of this swell compare with any others that you may have seen?

A. That was, I should consider, a swell that was perhaps at that day a medium swell, an average of what was running during the day. There were some smaller and some much larger. The one that I saw

(Testimony of Albert Tullet.)

that broke, I should judge was about four feet higher than that. It broke by the fore part of the fore rigging, by the fore hatch.

Mr. WARREN.—Cross-examine.

Cross-examination of ALBERT TULLET on Behalf of Libellee. [2805—1974]

Mr. OLSON.—Q. How often would these swells come in in the course of an hour on Wednesday?

A. Every few minutes. There'd probably be three or four big swells and between these there'd be a few smaller ones.

Q. According to that picture there or those pictures of these swells, apparently the sea is very smooth except for that swell. Do you mean to say there was what you would call a rough sea?

A. No, sir, not a rough sea but what we call a ground swell.

Q. As a matter of fact, the water except as it piled at the edge of the reef there was practically smooth, was it not, referring you to this picture? I am now referring to Libellants' Exhibit "K." Isn't that so?

A. The swell would be smooth in one place where it would be rough in another.

Q. I'll ask you if the sea wasn't smooth except for the piling up of that swell?

A. No, the swells were coming in from seaward.

Q. Doesn't this picture show that the sea is practically smooth with the exception of the swell?

A. It shows that because the picture was only capable of taking one swell.

Q. Around the boats where you were working about the "Mikahala," how high were the swells there?

(Testimony of Albert Tullet.)

A. They would reach from about ten to twelve feet.

Q. There was very little difference?

A. Several times they'd reach about sixteen feet.

Q. When did they reach sixteen feet?

A. There's one that I saw break, but there were others, that reached almost that height. [2806—1975]

Q. There was one sixteen-foot swell as far as you observed, then, between these other swells that you say were ten or twelve feet high?

A. I don't understand the question.

Q. You've testified to one sixteen-foot swell?

A. Excuse me. I testified to one swell breaking which I judge to be sixteen feet.

Q. Were there other swells that reached as high as that? A. Fifteen and a half?

Q. You've testified to one sixteen-foot swell that you observed. A. Yes.

Q. Now, then, were there other swells that you have testified concerning that were apparently a little larger than the swells out alongside your vessel? Weren't there? A. Yes.

Q. Very little larger?

A. Two or three feet larger.

Q. Referring to Wednesday, Captain Tullet, the day that the—the last day of the operations there, I'll ask you about how far apart these swells were. That is, I mean, in time as close as you can remember now.

A. Each swell?

Q. Yes.

A. Oh, it would only be a mere guess.

(Testimony of Albert Tullet.)

Q. Well, let's have your presumption.

A. My presumption of the time between swells would probably be ten or fifteen seconds.

Q. And do you mean to say that swells were coming in there sometimes at intervals of ten or fifteen seconds? A. Yes.

Q. Isn't it the fact that occasionally there would be two or three of the larger swells that would come in, one after the other, and then there would be a period of time when, ordinarily speaking the water would be smooth for a considerable time?

A. Would be considerably smoother but there'd still be the smaller swells running. [2807—1976]

Q. They wouldn't affect the unloading of the boat?

A. No, not the smaller swells.

Q. It's only the larger swells that have a tendency to make the unloading difficult? A. Yes.

Q. Isn't it a fact that these intervals between the larger swells would run up to ten or fifteen minutes?

A. No, sir.

Q. How long would these intervals be?

A. Possibly three or four or five minutes.

Q. And that's all? A. Yes, sir.

Q. How were the swells on Wednesday as compared with Monday in size?

A. On Monday there was quite a heavy swell running up.

Q. Isn't it the fact that the swell that was running on Monday was the heaviest that ran of any of the time that the "Celtic Chief" was on the reef as far as you know? A. I couldn't state that.

Q. Well, what is your recollection on the point?

(Testimony of Albert Tullet.)

A. My recollection of the point is that there was quite a heavy swell on Monday and that there were times between Monday and Wednesday when the swell went down considerably and there were times when it rose again higher.

Q. Isn't it the fact, Captain Tullet, that the swell gradually, from Monday until Wednesday night, reduced so that on Tuesday the swells were running not quite so violently as on Monday and likewise on Wednesday the swells were not running quite as violently as on Tuesday? A. No, sir.

Q. That's not the fact? A. No, sir.

Q. And if witnesses have testified to that effect heretofore on this trial, they have not told the truth?

A. They have evidently been mistaken.

Q. That is your present belief?

A. That's my belief.

Q. And recollection? A. Yes. [2808—1977]

Q. And if witnesses have testified that these swells would come along on Monday, two or three at once, and then it would be practically quiet for a considerable period of time, fifteen minutes, half an hour, or more, it would also be incorrect, would it?

A. According to my opinion, yes, sir.

Q. Captain Tullet, are you prepared to say that you have never, in the course of your experience in navigating in these Islands, seen shore boats of the Inter-Island Steam Navigation Co. operating alongside of vessels in the regular inter-island trade, taking cargo off or putting cargo on the vessels with swells running higher than the ones you saw out at the "Celtic Chief"?

(Testimony of Albert Tullet.)

A. I have noticed alongside of my vessel when they have been running as high and higher.

Q. Much higher?

A. Not much higher, no, sir.

Q. Higher? A. Higher.

Q. Higher than you saw it running at any time out around the "Celtic Chief"? A. Yes, sir.

Q. And, as a matter of fact, under those conditions, cargo is taken off and put on the vessels in the regular inter-island trade with swells running as high as that and higher, in the ordinary course of business, is it not? A. Yes, sir.

Q. You spoke of a recent occurrence where the "Mikahala" received passengers on board or whatever it was from the "Mauna Kea." The "Claudine" and the "Mauna Kea" at ——— Landing.

A. I took the passengers on board at ———.

Q. Was your boat lying near the wharf?

A. My boat was at the anchorage.

Q. In deep sea? A. About six fathoms.

Q. Now, alongside of the wharf how deep is it?

A. Alongside of the wharf is about half a fathom.

Q. Make considerable difference in approaching that wharf?

A. The danger in approaching that wharf was the big swells running in. [2809—1978]

Q. Also the shallowness of the water?

A. No, the swells were breaking that day in five fathoms.

Q. The swells were breaking out near your vessel?

A. Not breaking. My ship was riding those swells easy.

(Testimony of Albert Tullet.)

Q. With the "Mauna Kea," "Claudine" and "Mauna Kea"—don't you know a vessel as large as the "Mauna Kea" lying at an ordinary anchorage with swells of the kind that were running around the "Celtic Chief" or about the "Celtic Chief" on Tuesday or Wednesday, would have comparatively little motion? Isn't that so?

A. It would depend how the vessel was lying.

Q. The "Celtic Chief" was lying practically astern of these swells. These swells were striking her very little on her starboard corner.

A. Striking her about three or four points.

Q. As much as that?

A. The swells were running about southeast.

Q. How many degrees would that be to her starboard?

A. One point is eleven degrees and a quarter.

Q. So, practically speaking, it would be about forty-five degrees.

A. Four points would be about forty-five degrees.

Q. That's your judgment?

A. Between three and four points.

Q. So that no person could say with any reasonable degree of accuracy that those swells were, practically speaking, hitting her dead astern or a trifle over?

A. No, sir, they were striking between three and four points on her starboard quarter.

Q. It wouldn't be difficult to say?

A. A shoreman might think three or four points was a little off one way or the other.

Q. In this case I'm talking to seamen.

(Testimony of Albert Tullet.)

A. A seaman would claim it was three or four points.

Q. I'm asking whether or not a seaman would describe that swell as striking the "Celtic Chief" astern a little bit to starboard. [2810—1979]

Q. Would that be a correct description from a seaman's standpoint? A. No, sir.

Q. Even if the "Mauna Kea" were lying in a swell of this kind and the swell striking her three or four points on the starboard quarter in an ordinary anchorage, isn't it the fact that even so she would have comparatively little motion with the kind of swell that was running on Tuesday and Wednesday?

A. She would have considerable motion.

Q. She would? A. Yes, sir.

Q. If such a swell were striking the "Mauna Kea" in ordinary anchorage dead astern they would, nevertheless, run as high alongside of the "Mauna Kea" as they did her alongside of the "Celtic Chief"? A. They would not.

Q. Why not?

A. Because the vessel would rise.

Q. Even if she had comparatively little motion?

A. The motion is given by the water.

Q. Would not the water pile up near her side?

A. Nothing, not like a vessel lying steady.

Q. Would not it pile up? A. Very little.

Q. Do you mean to say, Captain Tullet, that a vessel and shore boats alongside that those swells would not rise and fall a considerable distance?

A. They would rise and fall but not very much.

Q. Don't you know that when you are discharging

(Testimony of Albert Tullet.)

passengers from alongside of your vessel that it, the vessel, rose up so it would come up alongside of or above the lighter and then would drop?

A. That's not the rise and fall of the vessel that does that, it is the rolling.

Q. But nevertheless there is that rise and fall?

A. The roll of the vessel.

Q. You take the "Mikahala"—she rolls considerable? A. Sometimes.

Q. You take a shore boat taking cargo from the "Mikahala." It would [2811—1980] have this rise and fall due to the rolling of the "Mikahala," wouldn't it? A. Certainly.

Q. Does the "Mikahala" ever discharge cargo at night? A. Sometimes.

Q. And there might be that kind of roll even at night?

A. If it rolls with a very heavy swell we wouldn't undertake to put the freight in the boats for some time.

Q. I'm asking you if you don't sometimes discharge cargo at night when there is more or less roll to the "Mikahala." And under those conditions the men in the shore boats incur more or less danger, do they not, from the rise and fall and the coming in contact or possible coming in contact with the swells?

A. They would have been considerably dangerous.

Q. But, nevertheless, there is that rise and fall which would tend to create that kind of a danger?

A. Probably creates some danger, yes.

Q. As a matter of fact, you've very often seen various shore boats take cargo where there's been

(Testimony of Albert Tullet.)

considerable rise and fall alongside the vessel and shore boat, haven't you, due either to the rolling or the swell?

A. Yes, I've seen them putting freight into the boats when there has been considerable roll on the ship.

Q. And considerable rise and fall of the shore boat?

A. It wouldn't be the shore boat rising and falling.

Q. A considerable variation then?

A. Variation, yes.

Q. Referring to Wednesday—I withdraw that. At the time that this picture was taken, I'm now referring to Libelee's Exhibit "K," I'll ask you if that was the average of the high swells that were running on that day.

A. No, sir, there were swells much higher than that.

Q. On that day? A. Yes. [2812—1981]

Q. What day was that? A. On Wednesday.

Q. Was that taken on Wednesday?

A. I thought you said you were referring to Wednesday.

Q. I say what day was that picture taken on. Well, I'll withdraw that question, I think, Captain, you don't seem to be able to remember it.

Mr. WARREN.—I object to that. Give the witness time.

A. I've taken a good many pictures and I have to go over them days to ascertain when I took those pictures.

Mr. OLSON.—I now will withdraw the question

(Testimony of Albert Tullet.)

in view of the fact that the witness seems to have difficulty in recollecting the time and will put another question.

Mr. WARREN.—I object to the statement as just made, your Honor, and move to have it stricken from the record as being improper. I also object to counsel withdrawing that question, your Honor, for the reason that it was asked and answered and when a question is answered it cannot be withdrawn.

Q. Captain, you said that you cannot remember on what particular day this picture was taken. I'm referring to Libellee's Exhibit "K."

A. I haven't said that.

Q. Have you answered when that was taken?

A. No. You haven't given me an opportunity to answer it. I was considering it.

Q. Kindly consider it and answer.

A. May I look at the picture?

Q. Certainly.

A. That was taken Wednesday A. M. I think.

Q. Wednesday morning?

A. I think so as near as my recollection serves me.

Q. Didn't you state before that was taken on Tuesday in reply to counsel's question to you?

A. I don't think so. I don't remember stating that. [2813—1982]

Q. You are sure it was taken on Wednesday now?

A. I feel sure it was taken on Wednesday.

Q. Now, was this swell an average swell of the kind that was running on Wednesday?

A. It was not the highest. It might be the average or the minimum. What I'd consider minimum.

(Testimony of Albert Tullet.)

Q. Minimum referring both to the large and small?

A. No, to the large swells.

Q. Minimum large swells? A. Yes.

Q. How much higher would they run?

A. Probably four feet.

Q. How many did you see that ran four feet higher? A. I couldn't answer that question.

Q. One?

A. The one I had reference to was the only one I saw break.

Q. And that was the only one, you said, was sixteen feet high?

A. I said the others reached approximately.

Q. Didn't you say pretty nearly the same height as the one that broke? A. Yes.

Q. And the one that broke was sixteen?

A. According to my judgment. I'm stating this approximately and I couldn't tell you within a foot or perhaps two feet.

Q. How many swells in an hour would run higher than that? A. I couldn't tell you that.

Q. Have you no idea? A. No.

Q. A few or many?

A. As I stated before, the swells would run in with an interval of five minutes, perhaps. Every time the big swells came there would be a big bunch of them and some of them reached higher than others, but I couldn't tell you how many swells would run in that way or the exact time of the swells or the exact height.

Q. Referring to Libelee's Exhibit "L," you testified, Captain, that the "Arcona's" lines or line was indicated in this picture, did you not?

A. Yes, sir. [2814—1983]

(Testimony of Albert Tullet.)

Q. Now, referring to a small line of the "Arcona," do you mean by that one of the lines that was used in getting these final lines aboard and heaving?

A. Yes.

Q. A heaving line?

A. A heaving line. What we call a heaving line.

Q. The fact that this running line was still there indicates to your mind, does it not, that this photograph was taken during the time that the "Arcona" was getting its lines on board? A. Yes.

Q. The "Arcona" hadn't yet got both of its lines on board when that picture was taken? A. No, sir.

Q. So that this picture is not a photograph showing the lines of the "Arcona" after she had gotten her lines fastened on the "Celtic Chief"?

A. No, sir.

Q. Isn't the same true of the Miller anchor line, that this picture does not indicate the final position of the Miller anchor?

A. That picture indicates as regards the Miller anchor line, as near as my memory serves me, the only position I saw Miller's line in.

Q. You never saw it more taut than that?

A. No, sir.

Q. And you were able to watch the lines very carefully?

A. My whole attention was taken up with my vessel on a *qui vive* for the "Celtic Chief."

Q. You had no more reason for watching one particular line than another, did you? A. No, sir.

Q. And the same testimony would be true with reference to all of your observations as to lines?

A. Well, I had no particular object in viewing

(Testimony of Albert Tullet.)

those lines, at the same time I couldn't help but seeing them.

Q. And you saw the Miller anchor line in that position during the whole time?

A. I saw the Miller anchor without that strain.

Q. There was no strain according to your observation? [2815—1984]

A. There was strain enough to keep that line.

Q. Do you know where that anchor was laid?

A. Yes, sir.

Q. How far astern of the "Celtic Chief"?

A. I could state approximately. Probably six or seven hundred maybe six or six hundred and fifty.

Q. Don't you know that a line laid from that anchor in the depth of water that that anchor lay in, couldn't have one ounce of strain on it so far as the purchases attached are concerned in order that that line could have the position that it had when you observed it? Don't you know that the weight of the line itself—

A. The weight of the line itself would cause the line to remain.

Q. At that distance?

A. I thought you meant in regard to no strain. A line of that size you couldn't hold up without purchases and keep it without any strain on it.

Q. Did it curve? Did it curve or slack?

A. Yes, sir.

Q. Now, I'm asking you if your observation on that point is the same as that with reference to the other lines. That is to say, that you took no closer note of any other lines than you did of the Miller Salvage lines?

(Testimony of Albert Tullet.)

Mr. WARREN.—Object to the question as asked and answered, your Honor.

The COURT.—Objection overruled.

A. I stated that my particular attention was not taken up with the lines, but at the same time I couldn't help seeing those lines and from appearances of the lines thought that the Miller's line was in the same position as in that photograph.

Q. And you were able to see the Miller Salvage Co. line as well as the others?

A. Yes, sir. Not only saw it but I remember making the remark to one of my officers why Miller didn't get his line taut.

Q. What officer was that, by the way? [2816—1985] A. That I don't remember.

Q. Captain Piltz?

A. I don't remember whether it was Piltz or my second officer.

Q. Kindly refresh your mind on that.

A. I couldn't know that. I remember distinctly making the remark.

Q. What is the name of your second officer?

A. The present is Hilo.

Q. Then?

A. I don't remember when he was second officer with me then or not.

Q. You made that remark either to Captain Piltz or the second officer, that is, the person that you now refer to as second officer?

A. Whoever might have been second officer of the ship at that time. I don't remember.

Q. You don't know?

A. I could easily get that for you if you want that.

(Testimony of Albert Tullet.)

Q. But you can't remember?

A. No, I can't remember.

Q. So then, as far as your observation went, the only agencies that were doing any pulling on the "Celtic Chief" was the Inter-Island?

A. I don't know what the Miller Salvage Co. was doing during the hours of darkness.

Q. For some time before the "Celtic Chief" began to move until she came off, the only agencies that did any pulling were the Inter-Island boats?

A. To my observations, yes.

Q. Neither the "Arcona" nor the "Mikahala" line did anything during that period?

A. I'm positive that the "Arcona" did nothing.

Q. And you are positive that the Miller Salvage Co. did nothing with their line from your observation?

A. That I wouldn't state anything positive about because it was a twelve-inch hawser.

Q. And each time you saw the "Arcona's" line it was in the same relative positions? A. Yes, sir.

Q. So that, in your judgment, the Miller Salvage as well as the "Arcona" was doing nothing during that period of time? That's [2817—1986] your present judgment, is it not?

A. That's my present judgment.

Q. You are on the bridge, were you, all Wednesday night?

A. All of Wednesday night, yes, up to the time we got up alongside the wharf.

Q. Where is the bridge signal bell or the telegraph where you signal your engineer on the "Mikahala"?

A. Four different places.

(Testimony of Albert Tullet.)

Q. Was there one near where you stood?

A. Yes, one on each side of the ship, on the upper deck and on the lower deck.

Q. How far would you have to step to reach one of those signal bells?

A. I didn't remain in the same position.

Q. You were on the bridge?

A. The bridge would probably be about a hundred feet altogether. If I was standing amidships on the forward part of the bridge I'd have five seconds. If I was standing astern I would have probably one hundred feet.

Q. How long would it take you to go to the ——— from the farthest point?

A. From the farthest point? Well, a hundred feet; I guess it would take me probably five seconds.

Q. Anyone else on the bridge besides yourself?

A. Yes.

Q. Who else?

A. As near as I can recollect, Mr. Dowsett was there.

Q. Any of your officers?

A. My officer was on the "Celtic Chief" up to about half-past eleven.

Q. Your first officer? A. First officer.

Q. Were there any officers on the bridge besides yourself?

A. No, not up to the time the chief officer came on board.

Q. When your propeller is going at full speed, how long does it take for you to actually stop the propeller?

A. It depends, of course, what the engineer is

(Testimony of Albert Tullet.)

doing. He may [2818—1987] be oiling his bearings or he may be attending to some other work.

Q. Suppose that he hears your signal and is able to respond to it at once. Suppose he hears your signal and responds to it at once, it shouldn't take him long?

A. I couldn't answer that question. I don't know anything at all about working the engines.

Q. You have no idea?

A. I have an idea, approximately how long. I have seen the occasion where the engineer was outside when he's standing by the engine and working the engine, it's only a few seconds.

Q. Why didn't you state that on direct testimony when you were asked by Mr. Warren regarding the amount of time it would take to stop the propeller? Why didn't you?

A. What statement did I make at that time?

Q. Do you remember?

A. I don't remember everything.

Q. You don't remember that?

A. Don't remember the exact words; no.

Q. Don't you remember what you testified as to the length of time it would get the propeller stopped in case the line broke?

A. I think I made the statement, the answer, as near as I remember that Mr. Warren asked me what danger was there to the line getting in the propeller and I said it depended where it broke.

Q. And testified also regarding the length of time it would take to stop that propeller?

A. I don't remember testifying to that.

The COURT.—I recall that, Captain.

A. I think the question was how long would it take

(Testimony of Albert Tullet.)

for that line to get into the propeller.

Q. Didn't you say it would take a minute or a minute and a half to get the propeller stopped?

A. I don't remember saying that.

Q. You are not prepared to say now that it would take a minute or a minute and a half?

A. I'm prepared to say it would take somewhere about that time. I'm not prepared to state the exact time. [2819—1988]

Q. And if you did say it would take a minute or a minute and a half on direct, you were saying something you didn't know?

A. If I said that I meant it was about that time.

Q. And that's all you meant?

A. That is all I meant to say.

Q. It might be considerably less than that?

A. It might be, yes.

Q. From the bridge you would naturally know practically at once if the line parted, wouldn't you?

A. It would depend upon what part of the bridge I was on and what line broke.

Q. Wouldn't you know it practically, well, within a second or two? A. Not necessarily so.

Q. If you were on the bridge wouldn't you feel the shock?

A. It would depend upon how it broke. You must recollect, Mr. Olson, I had two lines out. The strain was equal on both lines. If it broke close to the "Celtic Chief" it might escape my notice.

Q. Suppose it broke out near the "Mikahala," wouldn't you be practically certain to know it?

A. Yes, because I would naturally feel somewhat of a shock.

(Testimony of Albert Tullet.)

Q. If it broke near to the "Celtic Chief" there would be practically no danger of its getting mixed up with the propeller? A. No, sir.

Q. Naturally, because when there would be danger of its getting mixed up with the propeller you would feel the jar and would know at once that the line was broken if it was broken near the "Mikahala"?

A. I would have to go and notice. If I happened to be forward I would have to go to the after part to see if it was broken or not. There are other jars that come on board a ship besides the jar from a broken line.

Q. You said that you didn't notice the "Arcona's" line at the "Arcona's" stern, I believe, after the search-light was up. You still noticed the starboard line near the "Celtic Chief"?

A. I noticed her line over my line. [2820—1989]

Q. At the "Celtic Chief"?

A. At the "Celtic Chief." I had no particular object in watching that.

Q. Didn't you notice the "Arcona's" stern and the lines there?

A. I did not notice the lines. I remember seeing the "Arcona" pointed to ———. As I stated before, I didn't have any particular object in watching her lines.

Q. Isn't it a fact that her search-light sending a focus of light near the vessel would darken it so much so that you would not have a view of the stern?

A. I don't remember that. My remembrance is that the "Arcona" and the "Celtic Chief" were both in plain view, but I don't remember of watching for her lines, as I stated before. My whole attention was

(Testimony of Albert Tullet.)

taken up with the manoeuvres of my own vessel. I had a particular object in watching her line cross my lines on the "Celtic Chief."

Q. And that's the only place where you observed her lines?

A. That's the only place I observed it to take any notice of it. There are many things that I probably saw and not being of any consequence to me, I naturally don't remember them.

Q. One of the dangers that you spoke of that the "Mikahala" was subject to was that if one of her lines should part and get mixed up with the "Mikahala," it would swing around. When it got into the propeller the vessel would be disabled, would tend to swing her to the anchor. What was keeping her in position was her anchor. If one end should break she'd naturally swing to the other and that would bring the danger of the "Mikahala" colliding with the "Arcona." Couldn't you have hove in on your anchor somewhat?

A. I could but perhaps not in time to avoid the collision. Naturally that would be the logical way out of it and the thing to do, but it might not be in time.

Q. The swell, you say, was running toward the "Celtic Chief"?

A. About three or four points on the starboard quarter.

Q. And that swell, of course, was striking the "Mikahala," running [2821—1990] the same direction?

A. The swell was running the same direction, certainly.

Q. What was the length of the line of the "Mika-

(Testimony of Albert Tullet.)

hala? A. It was a full coil.

Q. Well, what's the length?

A. 125 fathoms. That is the length from the extreme end of it.

Q. What was about the distance between the two ships? A. I should judge about 500 feet.

Q. Do you know what the length of the lines of the "Arcona" were?

A. The distance to them? What do you want to know?

Q. Stern to stern.

A. I should judge perhaps about 550.

Q. Wasn't the "Arcona" lying further ahead, more than 50 feet?

A. It might have been more than 50 feet, but it wasn't any less.

Q. You made a drawing here, Captain Tullet, showing that the "Arcona"—I'm now referring to Libellant's Exhibit "H"—showing the "Arcona" ahead of the "Mikahala."

A. I also made the statement when I made this drawing, that I wasn't drawing that to scale, only to show the position with regard to direction.

Q. The approximate position with relation to one another—that is, the towing vessels—isn't shown?

A. There are two towing vessels.

Q. Have you shown—

A. In regard to the bearing from the "Celtic Chief."

Q. Any reference to which was ahead?

A. Without any reference to the distance.

Q. Isn't it the fact that the "Arcona" was lying with her stern forward of the beam of the "Mika-

(Testimony of Albert Tullet.)

hala''? A. With her stern forward of the beam?

Q. Yes.

A. Her stern was forward of the bow of the "Mikahala."

Q. So that, Captain, the "Arcona" was at least the "Mikahala's" [2822—1991] whole ship length farther away from the "Celtic Chief" than the "Mikahala" was? A. Yes.

Q. What is the length of the "Mikahala"?

A. 147.

Q. If the "Mikahala" was 147 feet and she had 500 feet between her and the "Celtic Chief," would not that mean that the "Arcona" was about 647 feet away from the "Celtic Chief"? A. Yes.

Q. Will you kindly explain, with a swell setting toward the "Celtic Chief" in the manner you have described, how the "Mikahala" swinging with her anchor to the swell would be in danger of striking the "Arcona"?

A. I said, the tide setting to the westward, the "Mikahala" would immediately swing around.

Q. How long does it take for the tide to gain its full height?

A. The tide that I spoke of is the current that is floating to the westward at times.

Q. Wasn't the swell coming with greater force than that current?

A. That I couldn't say. Might have been; maybe not.

Q. Don't you know that that current flows along the ledge of the reef?

A. I know the current flows from the entrance of

(Testimony of Albert Tullet.)

the channel clear down to Barber's Point towards westward.

Q. You don't know that the current flows parallel to the edge of the reef?

A. Yes, parallel to the edge of the reef.

Q. Now, then, do you mean to say that the position that the "Mikahala" was in with the swell running toward the "Celtic Chief" and the current running parallel with the reef, that it would have the tendency to throw the "Mikahala" toward the "Arcona"?

A. Because my anchor was ahead of the stern and dropped more toward the "Arcona."

Q. Wouldn't the swell have some influence?

A. The swell was—

Q. It was toward the "Celtic Chief"? [2823—1992]

A. The swell was about at right angles to the current. Both of them would be tending to set me from my anchor toward the "Arcona."

Q. Kindly show the points of the compass on this chart, on this Libellants' Exhibit "H."

A. All right, roughly only.

Q. As nearly as you can give it. It went southeast and west?

(Witness draws.)

Q. Now, then, have you drawn the compass?

A. Wait until I mark it.

(Witness marks.)

Q. Now, you've marked the points of the compass, north, east, south, and west by letters N., E., S., W.?

A. It's to be considered that it's approximate only.

Q. That's as near as you can make it?

A. Yes, sir, mere guesswork.

(Testimony of Albert Tullet.)

Q. Now, then, isn't it the fact, Captain, that the swell was running in a—what direction was it?

A. Southeast.

Q. In a southeast direction? A. Yes.

Q. And the current was running in what direction?

A. Westerly.

Q. Wouldn't the swell have a tendency to throw your vessel around somewhat? A. No, sir.

Q. Wasn't it striking the "Mikahala" on her starboard quarter?

A. It was not striking the "Mikahala" on the port bow.

Q. I mean the "Celtic Chief"? A. Yes, sir.

Q. Running to the northward? A. Yes.

Q. It was, wasn't it? A. To the northwest.

Q. The swell was running from the southeast to the northwest? A. Yes.

Q. Then it would have a tendency to throw the "Mikahala" to the northwest?

A. The tendency would be to run in conjunction with the swell. [2824—1993]

Q. I'm asking you what the tendency of that was.

A. That varies with the swell.

Q. What would be the effect of this westerly current?

A. The current would, no doubt, be the strongest.

Q. Didn't you say a few minutes ago it would not be the strongest? A. Yes.

Q. Why do you say now that the current would undoubtedly be the stronger?

A. What I do know is this, that between the current and the swell, it would tend to set me around on top of the "Arcona."

(Testimony of Albert Tullet.)

Q. Then the current was running from the northeast to the southwest, was it?

A. No, the current was running from the eastward to the westward.

Q. Have you approximately laid the anchor of the "Mikahala" with reference to the position of the "Arcona" on that chart? Is that approximately correct?

A. Well, the "Arcona," if it was measured mathematically, would probably be closer to the "Mikahala" and the "Mikahala" closer to the "Arcona." As I said when I drew this chart, I have only drawn it as regards the bearings of each vessel from the "Celtic Chief," the line of pull is what I mean to show. The line of pull with reference to the distance. I could draw a chart with actual distances if you wanted it and give me time to do it, but I should judge that the stern of the "Arcona" would come a few feet of the "Mikahala's" bow or the "Mikahala's" anchor would be about midships of the "Arcona."

Q. About how long do you think it would have taken the "Mikahala" to swing around up against the "Arcona"? A. That I couldn't state.

Q. Have no idea?

A. Well, I have an idea. I know a vessel swings very quickly to her anchor. Depends upon the force of the current.

Q. How many anchors had you on the "Mikahala" in December, 1909? A. Three. [2825—1994]

Q. And where were those anchors located?

A. One I used up and one down in the hole as a spare anchor.

(Testimony of Albert Tullet.)

Q. Down in the hole?

A. Yes, it's carried as a spare anchor in case anything goes wrong with any of the others.

Q. In any of these salvage operations that you have spoken of as having been a party to, did you observe any vessels towing on a ship ashore?

A. Besides my own vessel?

Q. Yes. A. Yes.

Q. You had your own vessel on there with other ships? A. Yes.

Q. In any of them did you observe any case where the line parted and became mixed up with the propeller of the towing vessel? A. Yes.

Q. Which one?

A. I have seen a line break. "Claudine's" hawser broke a few months ago up in Kohala.

Q. Towing on a vessel ashore?

A. No, the vessel was not ashore. She was just on the verge of towing the vessel out to sea.

Q. I'm asking you about salvage operations.

A. I misunderstood you.

Q. I referred to the various salvage operations that you were a party to and I asked if you saw in any of those operations any line break and become tangled in the propellor?

A. I don't remember at this moment.

Q. Wouldn't you have remembered it if you had seen it? A. I have a dim recollection.

Q. Were you on the "Claudine" at this time that you spoke of?

A. No, but I was close to her. I was within a hundred and fifty feet of her.

(Testimony of Albert Tullet.)

Q. Do you know whether or not the "Claudine's" line was a new line at that time?

A. It is—it was a brand new line.

Q. And it broke?

A. Yes, and got in the propeller.

Q. Where was it that you observed the lines of the "Helene" and [2826—1995] "Likelike" on Wednesday night? A. Where was it?

Q. Yes. A. From the bridge of the "Mikahala."

Q. And where did you see the lines? Where were the lines? What part of the lines did you see?

A. I saw the lines from the "Celtic Chief."

Q. You could see them at the bow of the "Celtic Chief"—I mean at the stern of the "Celtic Chief"?

A. Yes.

Q. You could see the "Likelike" also?

A. Yes.

Q. Do you know where that was made fast?

A. I know where the "Helene's" line—

Q. I'm asking about the "Likelike"?

A. No, I couldn't say where the "Likelike" entered.

Q. Do you know at what angle she was pulling, the "Likelike"? A. Do you mean what course?

Q. What angle with reference to the "Celtic Chief"?

A. She was the outside vessel, the one furthest to the westward.

Q. About how many points westward?

A. That would be hard for me to judge from my position because I was outside the ship in the opposite direction.

Q. You could see the "Likelike's" line plainly?

(Testimony of Albert Tullet.)

from the bridge on Wednesday night after the search-light was put on? A. Yes.

Q. The "Helene's" also? A. Yes.

Q. And they were perfectly taut?

A. Perfectly taut.

Q. What do you mean by that?

A. I mean they were so tight that they looked like fiddle-strings.

Q. Straight out? A. Yes.

Q. Through the air? A. Yes.

Q. True of the "Mikahala's" lines also?

A. The "Mikahala's" lines were taut, [2287—1996]

Q. The same way?

A. No, not as taut as fiddle-strings.

Q. Why not?

A. I don't think our anchors had to hold in the same strain that the "Helene" and "Likelike" did.

Q. And you think that the "Helene" and the "Likelike" by means of their anchors were able to bring their lines out straight in the air like fiddle-strings? A. Yes.

Q. Do you know the size of those lines?

A. No, only from hearsay. I've never measured the lines.

Q. You know that they were manilla hawsers, don't you? A. Yes.

Q. And they had about, approximately how much line between the "Celtic Chief" and them?

A. I should judge that the "Likelike" had about the same as the "Mikahala"; probably 450 or 500 feet.

(Testimony of Albert Tullet.)

Q. And you think that it was possible for this vessel to get those lines taut in that fashion, manilla hawsers, without breaking them? A. Yes.

Q. They never touched in the water at all?

A. I wasn't watching them all the time; I didn't keep my eyes on them all the time.

Q. Never saw them on the top of the water?

A. No, sir.

Q. And that was true on Wednesday night after the search-light was put on? A. Yes, sir.

Q. Now, about the "Mikahala's" lines. Did they drop in the water at all?

A. Only when the sea mounted up and hit them.

Q. Would they be more out of the water or more in the water?

A. The "Mikahala's" lines were out of the water and the only time they touched the water was when the swell mounted up.

Q. That would only be occasionally?

A. That would only be occasionally.

Q. What is the horse-power of the "Mikahala"?

A. About 500. [2828—1997]

Q. And you think that the "Mikahala," by means of her propeller alone, could keep her hawsers, manilla hawsers such as those were, out of the water all of the time except when the swells would lift up and touch them? A. I'm sure of it.

Q. Towing on a fixed object?

A. Yes. Towing on a moving object, she could not do so.

Q. But she could do it on a fixed object?

A. Yes, sir.

(Testimony of Albert Tullet.)

Q. How large were the lines of the "Mikahala"?

A. Eight-inch.

Q. Both of them? A. Yes.

Q. Two eight-inch manilla hawsers? A. Yes.

Q. Approximately 450 or 500 feet of rope and she could keep both of those hawsers out of the water all of the time except when the swells would run up and touch them? A. Yes, sir.

Q. Do you know how much, how heavy an object a vessel such as the "Mikahala" could pull off a wharf by means of her propeller if it it were lying flat on a wharf?

A. No, I couldn't state how heavy an object she could pull off.

Q. You don't know? A. No, sir.

Q. You think she could pull off a three-ton object?

A. Yes, I do.

Q. What makes you think so?

A. Because I've pulled a heavier object than that off a sand beach.

Q. Without any wharf? A. Yes, sir.

Q. With a 500 horse-power vessel? A. Yes, sir.

Q. You think she could pull a 5-ton object off a wharf? A. I don't know.

Q. What was this object that you pulled off the sand beach? A. A boat-load of sand.

Q. High and dry? A. Yes. [2829—1998]

Q. Was the beach sloping or level?

A. The beach was a little sloping.

Q. Was the beach of hard substance or of soft sand? A. It was of soft sand.

Q. The "Mikahala" did it with a straight pull?

(Testimony of Albert Tullet.)

A. Yes, sir.

Q. Do you know how much sand there was in that boat? A. In a boat, one of my own boats.

Q. Do you know how much sand there was in the boat?

A. Yes, I should judge there was probably about three or four ton. The boat itself would weigh about a ton.

Q. Well, then, in your opinion the "Mikahala" could pull a five-ton object off a wharf in that way?

A. I don't know. It would depend upon what the object was and it would depend upon what kind of surface she was going to pull it over.

Q. Well, we'll say ordinary smooth surface.

A. I think I could pull a five-ton off an ordinary smooth surface if the object were being pulled with the —— of the boat.

Q. How many propellers has the "Mikahala," or had it in December, 1909? A. One.

Q. Do you know the diameter of the propeller?

A. I couldn't give you that now. I think it is about nine feet.

Q. Know the pitch?

A. I think the pitch is about 13.

Q. Will you kindly ascertain both of those facts?

A. I will.

Q. What was the indicated horse-power of the "Mikahala" at that time?

A. As I stated before, about 500, as far as I know.

Q. Do you know anything about the engines themselves? A. No, sir.

Q. You do not? A. No, sir.

(Testimony of Albert Tullet.)

Q. What's the name of your engineer at that time?

A. Mr. Christiansen. [2830—1999]

Q. Is he in Honolulu? A. Yes, sir.

Q. Do you know anything about the engine pressure? A. No, sir.

Q. You remember distinctly, do you, that the tide was high when the "Arcona" put her first line on board and broke it?

A. I remember it was high tide at noon that *do*.

Q. And it was about that time that she broke her line? A. Yes.

Q. So that she was not making a pull then at the time when she broke her line when the tide was low?

A. No.

Q. When did you first notice that the "Celtic Chief" was beginning to move seaward?

A. Quarter to twelve.

Q. How did you happen to note the time?

A. Because I had my watch in my pocket.

Q. And what did you see that lead you to the conclusion that she was moving?

A. I had the bearings of lights ashore.

Q. What were those bearings?

A. Bearings of two objects, two lights.

Q. Two lights? A. Yes.

Q. And where were those lights?

A. Towards the seaward, towards Diamond Head.

Q. About how far from you?

A. About how far, I couldn't say, that because it was night-time. I simply picked out two objects from which to guide me.

Q. Both of them were ashore? A. Yes.

(Testimony of Albert Tullet.)

Q. Approximately how far was the farthest?

A. May have been a mile or may have been five miles.

Q. That the closest you can give?

A. It wouldn't have been less than a mile.

Q. How far do you think the "Celtic Chief" moved the first time she moved?

A. That I couldn't state.

Q. Have you no idea?

A. Not in regard to the ship. I know the gap closed up between those two lights.

Q. When you saw this at quarter to twelve you said she moved first and then she stopped and then moved again? I want to know how [2831—2000] much you think, judging from this closing of the gap, that she had moved the first time?

A. Well, I couldn't say because I'm not in a position to say, to figure those two intervals that these two lines would tell me the ship moved.

Q. So you have no idea? A. No, sir.

Q. Now, when these twelve or fourteen-foot swells would come along and strike the "Mikahala" on her port bow, would they have any effect on the "Mikahala" at all? A. Nothing more than raise her up.

Q. Wouldn't have a tendency to throw her toward the "Celtic Chief"?

A. The swells didn't have force enough out there. It was when the swells began to gather their force in coming in shallow water.

Q. Didn't you notice that your lines would sag at times?

A. I noticed the swells would raise the lines.

(Testimony of Albert Tullet.)

Q. I'm asking you if you didn't notice that your lines would sag at times? A. No, sir.

Q. You are sure they did not?

A. I'm sure if there hadn't been any swell that the line wouldn't have touched the water.

Q. Are you prepared to say that those swells didn't so much as move the "Mikahala" a foot or five feet one way or the other?

A. No, I'm not prepared to say that.

Q. It might? A. It might.

Q. And might not that have been responsible for this variation?

A. Oh, no, the variation was too great for that and the variation was too constant. If it had been one point the "Mikahala" moved the gap would open again.

Q. Which was it, opening or closing?

A. Closing.

Q. How long did this closing go on?

A. It began to close up and then it stopped.

Q. How long?

A. I couldn't state the time. I [2832—2001] was too busily engaged.

Q. You have no idea whether it was a minute? You weren't watching your range lights very well?

A. Yes, I was watching my range lights.

Q. How long did you watch them?

A. Watching them all the time, same time watching the ship. I made a remark to Captain Piltz that the ship was moving, "She's coming."

Q. I have no doubt you noticed the variation.

A. And it was that that caused me to heave my anchor up.

(Testimony of Albert Tullet.)

Q. It was Captain Piltz that you made that remark to?

A. That the ship was coming, yes. He was on board the ship then. He had been on board from half-past eleven.

Q. Where was Captain Piltz at the time?

A. On the bridge.

Q. Now, how soon was it after a quarter to twelve before the "Mikahala" was actually afloat for the first time?

A. The "Mikahala" was afloat all the time.

Q. I mean the "Celtic Chief"?

A. I couldn't name the exact time.

Q. How long do you think?

A. I know it was from quarter to twelve to twenty past twelve when our hawser was cut.

Q. You know your hawser was cut after the "Celtic Chief" was afloat? A. Yes.

Q. Do you know how long after?

A. I couldn't say.

Q. Have no idea?

A. I knew it was within a half an hour.

Q. That is the closest you can come to it?

A. I could come nearer to it.

Q. How much nearer?

A. From the time the ship was afloat until my hawser was cut?

Q. Yes.

A. It might have been ten minutes, it might have been more or less. I wouldn't confine myself to any special time. [2833—2002]

Q. When the "Celtic Chief" came off you said she

(Testimony of Albert Tullet.)

headed directly for the "Arcona"?

A. Yes, that is, stern first.

Q. And you also say that she came within twenty feet of her? A. Yes, sir.

Q. According to your judgment?

A. From my position on the bridge.

Q. That is, if she had gone twenty feet further she would bump into the "Arcona"? A. Yes.

Q. And then the "Arcona" began to move?

A. Yes.

Q. And you still maintain, do you, that the "Arcona" pulled the "Celtic Chief" out or ahead?

A. I certainly do.

Q. She kept going directly astern and kept on until within twenty feet and then the "Arcona" began to move.

A. I don't claim that the "Celtic Chief" was directly in line with the "Arcona" when the gap was closed up. She might have moved fifty feet off and I wouldn't be able to see from my position.

Q. Didn't you say just a few moments ago if the "Arcona" hadn't begun to move, according to your judgment, the "Celtic Chief" would have bumped into the "Arcona"?

A. If the "Mikahala" hadn't towed her away.

Q. That was what you said?

A. That's what I intended.

Q. Didn't you say that the "Celtic Chief" came off headed directly for the "Arcona," kept on until she came within twenty feet of her and then the "Arcona" began to move?

A. I said until she closed the gap within twenty feet.

(Testimony of Albert Tullet.)

Q. And you said if the "Arcona" hadn't begun to move she would have been bumped by the "Celtic Chief"? A. I don't know whether she would.

Q. You mean to say that wouldn't have happened?

A. What I meant to say, if the "Mikahala" hadn't pulled her clear and took her sternway, there would have been a collision. I'm sure of that. [2834—2003]

Q. When you referred to the height of the swells being twelve feet or fourteen feet or sixteen feet, do you mean the height from the sea level, the ordinary sea level? A. Yes.

Q. To the top of the swell? A. Yes.

Q. So that the boats taking cargo alongside of the "Celtic Chief" were rising *a* falling from twelve to sixteen feet? A. Yes, sir.

Q. That was on Wednesday?

A. Well, it may have been on the other days too.

Q. Also on Tuesday?

A. Remember we were lightering, during the times we were lightering the cargo. I couldn't state positively what times they were.

Q. The swell would have been very decidedly less on the port of the "Mikahala" than on the starboard side?

A. It would have been less, at the same time I don't know how much.

Q. The swell wouldn't rise as much, would it, on the port side of the "Celtic Chief" as on the starboard side? A. No.

Q. In other words, the action of the water wouldn't be so violent and the rise and fall not so great?

(Testimony of Albert Tullet.)

A. No.

Q. How did the "Helene's" boats come alongside of the "Celtic Chief," on the starboard side?

A. I think the "Helene's" boats took freight from the port side.

Q. Didn't you state on direct that the "Helene's" boats also took cargo from the starboard side?

A. When they were working the cargo?

Q. That is what you mean when you said the "Helene's" boats were working on the starboard side? A. That's what I said.

Q. Would it have been possible for the "Mikahala's" boats to go on the port side?

A. It would have been possible, yes, but it would have been impracticable. It was greater danger.
[2835—2004]

Q. It would take more time, too?

A. It would take more time and also would be more dangerous.

Q. Will you kindly explain how it would be more dangerous for them to go to the port side?

A. Because there would be danger of the boat getting swamped from the line breaking and also the boats would have to pull against the swells to go back to the port side.

Q. The boats had to pull against the swell to go to the "Mikahala"?

A. The swells had no force out there.

Q. The boats would have to steer against the reef in going to the "Mikahala"?

A. There was no risk.

Q. Didn't you say that the swells were breaking out ahead of the "Celtic Chief"? A. Yes.

(Testimony of Albert Tullet.)

Q. How far ahead?

A. From the ship on; one broke abreast of the fore hatch. It was probably fifty feet from the stern or the ship.

Q. Don't you know that those swells reduced in size? A. I also know—

Q. Don't you know that?

A. Yes, I do. That is, after they have broken they reduce in size. The swells are far more dangerous when they're breaking than they are simply as swells.

Q. None of these photographs that you have here show any swells breaking?

A. No, I only saw from observation one break alongside the ship.

Q. I direct your attention to these various photographs and ask you whether or not there are any of the swells breaking around, in any of these, in the vicinity of the "Celtic Chief"?

A. No, I don't see any. This one looks as if it's going to break. (Pointing to exhibit.)

Q. Did you see any other swells break there alongside of the "Celtic Chief" or out ahead of it than the one that you have referred to?

A. I saw them break ahead.

Q. How many? A. Plenty. [2836—2005]

Q. A number of them? A. Yes.

Q. You didn't take any photographs showing any of the breaking swells? A. No, sir.

Q. Carefully avoided those?

A. I didn't particularly avoid those. They didn't happen to be breaking when I took the pictures. For

(Testimony of Albert Tullet.)

the same reason I didn't get the biggest swells in the picture either.

Q. How often did you observe that the "Celtic Chief" moved just before coming off and stopped and moved again? How many times did she move in this way?

A. Several times, but I couldn't state the number.

Q. You don't know? A. No.

Q. But you did notice that she stopped and moved again several times? A. Yes, sir.

Q. And the first one began at fifteen minutes to twelve? A. Yes, sir.

Mr. OLSON.—That's all except for these points as to the "Mikahala's" indicated horse-power, pitch, diameter of propeller, gauge pressure, and so forth.

Mr. WARREN.—As to those I will say that we expect to show those by another witness.

The WITNESS.—I'd like to state also, if I may, that I haven't any actual knowledge that the "Mikahala's" horse-power is 500, only from hearsay from the engineer. I have no means of determining of my own knowledge.

Mr. OLSON.—Then, on counsel's agreement to produce this data, take the witness, Mr. Weaver.

Mr. WEAVER.—If your Honor please, I have some cross-examination.

The COURT.—Adjourn court to to-morrow morning at ten o'clock. [2837—2006]

[**Testimony of George E. Piltz, for Libelants (Cross-examination).**]

Continuation of Cross-examination of PILTZ.

Wednesday, October 18, 1911.

Mr. OLSON.—Do you remember Captain Tullet making any remarks to you, Captain Piltz, when the “Celtic Chief” first began to move, and remark to you that the “Celtic Chief” was moving?

A. Yes, sir.

Q. You remember that? A. Yes.

Q. That was the first time that you noticed that she was moving? A. Yes, sir.

Q. And you were able to determine that she was moving by looking at the range lights; is that right?

A. He spoke to me and I immediately noticed that the range lights or the ranges that I had taken were altered.

Q. Do you remember how long you had been on board of the “Mikahala” when you noticed that movement for the first time?

A. Not over, I should say, about five or ten minutes.

Q. Five or ten minutes? A. Or less.

Q. You say that was about a quarter to twelve?

A. Somewhere in that neighborhood.

Q. Well, do you remember if you had the same range lights as Captain Tullet?

A. I don't know. I didn't know his range lights.

Q. You had range lights of your own. Up to that time the only motion of the “Celtic Chief” that you observed was this up and down motion showing her bumping or knocking, that she was bumping once in

(Testimony of George E. Piltz.)

a while? A. Yes, sir.

Q. You didn't even notice any movement on board of the "Celtic Chief" herself coming toward the sea? You were able to determine it only by lights that she was coming? A. Yes, sir.

Q. I believe you said, Captain Piltz, that you were not able to see the "Helene's"—I mean the "Likelike's"—line after [2838—2007] dark of Wednesday night; is that correct?

A. I could see them every time that I went to the rail and looked at the lines or looked to the position of the boat working close to the lines.

Q. That was while you were on the "Celtic Chief"?

A. While I was on the "Celtic Chief."

Q. Could you see the "Likelike's" line after you got aboard the "Mikahala" Wednesday night?

A. I never had any occasion to look at it.

Q. What?

A. I never had any occasion to look at it and consequently I did not see it or notice it.

Q. Did you see the "Helene's" line?

A. I don't remember if I could or not. Never looked that way.

Q. Do you remember seeing any other lines after you got aboard the "Mikahala" or were you too busy with your work on the boat to notice the lines?

A. I was too busy.

Mr. WARREN.—It seems to me, your Honor, that is going over old ground.

A. I was too busy attending to my work to notice any lines outside of our own.

Mr. OLSON.—That's all.

(Testimony of George E. Piltz.)

Cross-examination of Captain PILTZ on Behalf of
Miller Salvage Co., Libellants Herein.

Mr. WEAVER.—Captain, where did the “Celtic Chief” and “Arcona” lines come aboard on the starboard side of the “Celtic Chief”?

A. Midship chock.

Q. And were they connected with the mainmast?

A. Attached to the mainmast.

Q. How high were they above the deck?

A. Well, I don't exactly know the height, but I should judge [2839—2008] about eighteen inches.

Q. Were they taut up to the time you left?

A. Well, they appeared to be taut.

Q. Now, where they went through the chock, how high were they above the deck? You said they were eighteen inches above the deck. Were they eighteen inches where they went through the chock?

A. All the way across.

Q. Then the lower part of the chock whole is about eighteen inches above the deck; is that right?

A. I judge about that.

Q. Did you notice a shackle connecting the hawser of the Miller Salvage Co.'s lines with a steel cable on the Miller Salvage Co.'s line? A. No, sir.

Q. Did you notice whether or not the steel cable on the Miller Salvage Co.'s anchor was also connected with a hawser before it reached the vessel, “Celtic Chief”?

A. I did not notice anything to be able to tell if they had shackles or was attached to a line to a wire hawser.

Q. You don't know whether the lines, then, were straight or appeared to have a strain on them aft of

(Testimony of George E. Piltz.)

the "Celtic Chief"? A. Repeat that question.

Q. Do you know whether or not this line to the Miller Salvage anchor had any strain on it aft of the "Celtic Chief"? Did you notice that?

A. No, sir, I did not notice.

Q. You didn't notice whether it had a side-runner in it when you left or whether it was straight?

A. No, sir.

Q. Was the purchase-tackle of the Miller Salvage Co. line underneath or above this line that crossed the deck from the starboard, port chock of the "Celtic Chief" and ran toward the "Arcona"?

A. You've got that mixed up.

Mr. OLSON.—Read that. (Question read.)

A. The purchase-tackles were above or over.

[2840—2009]

Q. You are sure of that, are you? A. Yes.

Q. Do you know how much above they were?

A. Well, I didn't notice; it was exactly on the wire cable or it was above or clear of it.

Q. You don't know whether it was resting on it or not? A. No.

Q. At the time you left, I believe you testified that you noticed the Miller Salvage Co. tackles near the break of the poop were very close to the main deck, lying down and you could step over them?

A. That was abreast of the main hatch.

Q. Abreast of the mainmast or main hatch?

A. The main hatch, the mainmast as on the fore part of the main hatch. I noticed there that the lines were close to the deck. I was able to step over them.

Q. And didn't you notice that they were hanging

(Testimony of George E. Piltz.)

then, hanging on the "Arcona" lines which crossed the deck?

A. I did not observe that they were or stop to look.

Q. Now, didn't you notice that the Miller Salvage Co. lines were underneath that line crossing the deck, the "Arcona" line crossing the deck?

A. I noticed. In fact, I noticed that in fact they were not underneath.

Q. You are sure of that?

A. Yes, absolutely sure.

Q. Then, how far was it from the mainmast to the break of the poop?

A. Oh, I don't know the exact distance.

Q. How far would you say?

A. Oh, about fifty feet. Somewheres in that neighborhood.

Q. And how far forward of this mainmast was that purchase made fast?

A. How far forward of which?

Q. Of the mainmast.

A. I don't know the exact distance. [2841—2010]

Q. Give us your approximate distance.

A. It was fast to the bitts on the forward deck, on the fore part of the foremast. Somewheres in that neighborhood.

Q. About how many feet forward?

A. Oh, I hate to give any distance because I am unable.

Q. Can't you say whether it was over or under thirty feet or forty feet?

A. It may have been sixty feet somewheres in that neighborhood. Fifty or sixty feet.

Q. Was this place where you stepped over the line

(Testimony of George E. Piltz.)

abreast of the main hatch forward of this mainmast where the "Arcona" line crossed the deck?

A. Yes, sir.

Q. And about how far forward of that line was the point you indicate as the place you stepped over?

A. Oh, from six to eight feet.

Q. Did you notice when you stepped over them whether or not there was any strain on them or not?

Mr. WARREN.—At what time?

Q. At the time you stepped over them?

A. At any and all times I stepped over them I never noticed they were taut.

Q. Did you make a test by stepping on them with your foot or something like that?

A. There was always a very light spring on the lines every time I stepped over them.

Q. Did you step on them? A. Yes.

Q. You made a test?

A. Yes, I stepped over them.

Q. Stepped on them? A. On them.

Q. What did you find? A. They were slack.

Q. How many times did you do this?

A. I don't exactly know, but all of a half a dozen times.

Q. That was up to the time you left the ship?

A. Yes, sir.

Q. Were they at all times slack? [2842—2011]

A. Yes.

Q. Did you notice any men working on the capstan forward? A. No, sir.

Q. Weren't any men working?

A. I didn't notice or didn't see.

Q. Did you say they were or were not or you don't

(Testimony of George E. Piltz.)

know, which is it? A. I don't know.

Q. Do you know whether or not there was any slack being taken up on these purchases?

A. I don't know.

Q. Didn't notice that. How high was the deck of the poop above the main deck at the break of the poop?

A. About eight feet, in my judgment, probably more.

Q. Well, it was high enough to clear a man's head to walk underneath? A. Yes.

Q. A man six feet high could walk under that?

A. It was all of ten feet high.

Q. Do you know how high those Miller tackles were twenty-five feet aft of the poop, forward of the poop at the time you left? A. No, sir.

Q. You are only prepared to state how high they were abreast of the main hatch? A. Yes, sir.

Q. And then you did make tests more than once?

A. Well, I did not make tests to ascertain if they were taut or not. As I say, every time I stepped over them I noticed they were slack.

Q. Isn't stepping on a line a test?

A. It would be if you went there for the purpose of testing them. In this case I didn't go there for the purpose of seeing, learning if they were taut or not. As I say, every time I stepped over them I would have noticed that they were taut.

Q. Didn't you testify a few minutes ago that you had stepped on them and found that they were slack?

A. I did. From the time I was performing my duties in attending [2843—2012] to the loading of the boats.

(Testimony of George E. Piltz.)

Q. Didn't that naturally mean an accurate observation that they were slack or they were taut?

A. Yes.

Q. Then it was a test in that respect?

A. It was a test while performing my own business.

Q. Well, how slack were they?

A. Well, I am unable to state.

Q. Was there any strain on them at all?

A. Well, there may have been a strain on them but where I stepped over them they seemed to sag.

Q. What one did you step on, the main tackle, the first or second tackle? A. I am unable to state.

Q. May have been all of them or not all?

A. May have been all of them.

Q. Are you prepared to say that all three were slack?

A. No, sir, I am prepared to say the ones—I don't know how many they had there.

Q. You don't know that there were three?

A. No, sir, I did not stop to count.

Q. You don't recollect anything about the number of tackles? A. No, sir.

Q. Now, when did this second red light go up on the night of Wednesday in regard to your coming off the ship back to the "Mikahala"?

A. I don't exactly remember, but I think it was ten o'clock. Somewheres in that neighborhood.

Q. What is your idea now?

A. Well, in my last testimony my recollection is about ten o'clock.

Q. You still have that idea?

A. Yes, sir, I haven't heard anything to the contrary or know anything to the contrary.

(Testimony of George E. Piltz.)

Q. And did you consider it good practice to begin to pull on a vessel four hours before high tide in a case where the tide will be one foot and seven-tenths high at [2844—2013] high tide and the tide is rising? A. Repeat that question again.

(Question read.)

A. Yes, sir, I do.

Q. Did you see the second red light go up?

A. I didn't see when it went up at the time, it went up, but I noticed about ten o'clock there were two there. Maybe it was some time after ten.

Q. Do you know what that was a signal for?

A. Well, it was to make a united effort to pull the vessel off or to use all power that was available in the ships to pull on the "Celtic Chief."

Q. And from that time on the "Mikahala" was pulling? A. Yes, sir.

Q. Did that—then you are prepared to deny the fact, deny it to be a fact that the red light went up just before the "Celtic Chief" began to move off the reef?

Mr. WARREN.—One moment; I have just again been going through my notes. I find this has been gone through exhaustively by Mr. Weaver on cross-examination.

Mr. WEAVER.—I guess that's all.

Redirect Examination of GEO. PILTZ on Behalf of
Libellees Inter-Island Steam Navigation Co. and
Matson Navigation Co.

Mr. WARREN.—Q. Captain, you remember that Mr. Olson questioned you as to why the "Mikahala" chose to remain in the position she was in in view

(Testimony of George E. Piltz.)

of the fact and of your belief that if the "Arcona" had pulled on her lines she would have come over and her lines or herself would have fouled the "Mikahala" and why under those conditions your vessel remained there, and in view of the fact also that the "Arcona" was the more powerful [2845—2014] vessel. I want to ask you if you know whether or not any request or information of any kind was made or given by the "Arcona," as far as you know, that the "Mikahala" should go over.

Mr. OLSON.—I object to the question on the ground it isn't proper redirect; furthermore, on the ground it is incompetent, irrelevant, and immaterial.

The COURT.—I sustain the objection.

Mr. WARREN.—On cross-examination, Captain, in answer to a question of counsel relative to the operations of the "Arcona" in attempting to run a large hawser from the "Arcona" to the "Celtic Chief," you stated that they were not conducting those operations properly in order to get that cable on. I'll ask you what, in your judgment, would have been a proper and seamanlike way for the "Arcona" to have conducted that operation to bring that hawser on board.

Mr. OLSON.—I object to the question on the ground that it's not proper redirect examination.

The COURT.—Isn't it material?

Mr. OLSON.—Absolutely immaterial and I also object on that ground.

The COURT.—I sustain the objection.

Q. On cross-examination, Captain, you were asked whether it doesn't, as a matter of fact, sometimes

(Testimony of George E. Piltz.)

happen that when the shore boats are taking freight from an Inter-Island vessel off ordinary coasts, we'll say the Hamakua coast or some place, doesn't it sometimes happen that a sling will strike a man in loading the boats to which, when you endeavored, when you answered, endeavored to answer, [2846—2015] as I recollect, how frequently that happened. You were instructed that an answer of yes or no should be given, to which you said, "Yes, it sometimes happened." Captain, I want to ask you how frequently it will happen that sling loads will strike men in loading boats in shore as compared with number of times.

Mr. OLSON.—I object to the question on the ground it has been gone over.

The COURT.—I allow a question along that line.

Mr. WARREN.—I'll withdraw that and frame it a little different. Captain, on cross-examination you having testified that it sometimes happens that a sling will strike a man in the boats while unloading off Island coasts. I'll ask you what is the relative frequency and the danger of slings striking men operating out that way as compared with their striking men operating at the "Celtic Chief."

Mr. OLSON.—I object to the question unless it appears that this witness knows even approximately the men that were struck by slings out at the "Celtic Chief."

The COURT.—I will allow a question along that line, but I don't quite see how you are going to compare the two.

Mr. OLSON.—I object to the question further on

(Testimony of George E. Piltz.)

the ground it is incompetent, irrelevant, and immaterial.

Mr. WARREN.—I wish the record to show that I state as my ground in insisting on my right to put this question, is that counsel has endeavored on cross-examination, to meet the statement of this witness that these boats operated under dangerous conditions at the "Celtic Chief," that the boats and the men are, as a matter of fact, accustomed to operate under conditions where swells and other conditions were as real a danger in the general island trade that is constantly carried on by these steamers, and having attempted [2847—2016] to draw that parallel it is my right to go further into the parallel question of the danger between those operations and those to show how frequently the—

Mr. OLSON.—I object to the offer of proof on the ground—

The COURT.—I allow the question.

A. In loading the boats in the Inter-Island, why, they would be both in deep water and, naturally, the boat would not have as much surging and bouncing as they would in shallow water, which was the case at the "Celtic Chief" and also the "Celtic Chief's" working over the ——— of the "Celtic Chief" was stationary, whereas in the island trade the burthen is attached to the winch and where you see the sling approaching a man you have a chance of hoisting it and dropping it in the proper position at the boat, whereas in the "Celtic Chief" operations you was unable to do that, and that is the reply why it is more

(Testimony of George E. Piltz.)

difficult at the "Celtic Chief" than it is at the Inter-Island boats.

Q. Now, Captain, you haven't answered my question though as to the relative frequency of men being struck at those operations according to your own experience. That is, with your knowledge of the situation of the "Celtic Chief" and your experience with the island trade, how often have you seen men struck?

A. Probably once in two weeks or once in three weeks, whereas out here one or two get struck in this operation the first two days.

Mr. WARREN.—That's all.

Mr. OLSON.—I have no questions further.

Mr. WEAVER.—No further questions.

In the matter of the reading of the deposition of John W. McAllister, a witness in the above-entitled cause, called on behalf of [2848—2017] libellant, Matson Navigation Co.

Mr. OLSON.—I move to strike that answer on the ground it is not the best evidence. "She was a passenger boat and had to carry the mail." I now refer to page 13 of the deposition of John W. McAllister, the answer in response to the question, "How did the 'Mauna Kea' happen to leave?" "She was a passenger boat and had to carry the mail." My motion is to strike the latter half of that evidence, "and had to carry mail," as not the best evidence.

Mr. WARREN.—I object to the motion to strike, your Honor, on the ground that it certainly is within the common knowledge of everybody here.

The COURT.—I'll grant the motion.

(Testimony of Martin Christiansen.)

Mr. WARREN.—As to what?

The COURT.—As to the latter part, "she had to carry mail."

(Entire deposition read.)

Mr. WARREN.—The depositions were taken under stipulations. I offer them in evidence, your Honor.

The COURT.—They may be received in evidence.

Mr. OLSON.—Subject to the part stricken by my motion.

Recess.

[Testimony of Martin Christiansen, for Libelants.]

Direct examination of MARTIN CHRISTIANSEN, a witness called on behalf of libellants Inter-Island Steam Navigation Co. and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. Mr. Christiansen, did you have any connection with the Inter-Island steamer "Mikahala" the day that the "Celtic Chief" was ashore and pulled off the reef, December, 1909?

A. I did.

Q. What was your position on the vessel?

A. First Assistant Engineer.

Q. What time did you go on duty Wednesday night? **[2849—2018]** A. Twelve o'clock.

Q. Is that the time you went in the engine-room? Whose watch was it prior to that time?

A. The chief's watch.

Q. And on going in did you have any—what was the condition of the "Mikahala's" engines at that time? A. The engine was going at full speed.

Q. How do you know that?

(Testimony of Martin Christiansen.)

A. I examined the engine and saw that the throttle was open and looking on the steam saw it had the proper amount of pressure on the engine.

Q. You saw that on going in? A. Yes.

Q. How long did the engine continue with no change of throttle after that?

A. How long she continued full speed?

Q. Just before you answer that, what have you there, Mr. Christiansen? A. Copy of the bells.

Q. When was that made?

A. On December 9, 1909.

Q. By whom? A. Myself.

Q. From what? A. From the log slate.

Q. From the log slate? A. Yes.

Q. Who made the entries on the log slate?

A. I did; after twelve o'clock, of course.

Q. What is the—how are the bells noted in the engine-room in the ordinary course?

A. Take it—we have an engine-room clock, look at the time and note it down.

Q. On what? A. On a log slate.

Q. On a slate? A. On a slate.

Q. Use a slate pencil? A. Yes.

Q. You made those entries as you received the bells? A. Yes.

Q. During that watch. And how long did those notes remain on that slate?

A. Till afternoon of the following day.

Q. Then what happened?

A. I think as soon as the chief was through copying them off then the slate is cleaned off and sent down. [2850—2019]

(Testimony of Martin Christiansen.)

Q. That slate remains in the engine-room?

A. Remains in the engine-room.

Q. So that the slate itself is not preserved as a record? A. No, no.

Q. These notes that you have here you say you copied from that slate? A. Yes.

Q. And did you compare those with the slate when you copied them, carefully?

A. I naturally took them off the slate, yes.

Q. And you've had these in your possession ever since? A. Yes.

Q. Now, I will ask you if you can, independently of that paper, tell the changes of speed and the bells in the operation of your engine that night.

A. You mean the change in the speed of the engine between bells? Not very well between bells.

Q. Can you remember the intervals between the bells and the hour and minute that the different bells were given without that paper? A. No.

Q. Now, I will ask you—

A. That's why I note them down, because there's so many given.

Q. Referring to that paper made by you as you've stated, will you tell me how long the "Mikahala's" engine continued to run at full speed after twelve o'clock?

Mr. OLSON.—Now, I object to that unless it appears that the witness' memory is refreshed by reference from that paper and if it is not, he cannot very well state that the paper is correct. Let the paper be offered in evidence.

Q. Can you now, by reading that paper, have re-

(Testimony of Martin Christiansen.)

called to your mind, does that paper recall to your mind so that you remember the time the length of time that the bell continued? You cannot?

A. No, I wouldn't be positive on any point of that slate. It is almost impossible to handle an engine—

Q. This signature is whose at the bottom of this paper? [2851—2020] A. Mine.

Q. Your own?

Mr. OLSON.—I'd like to ask a question or two before he's permitted to testify with reference to this.

Mr. WARREN.—All right.

Mr. OLSON.—Q. Mr. Christiansen, did you make these notes on the slate yourself in the engine-room?

A. Yes.

Q. As you received the bells? A. Yes.

Q. You did? Now, did you copy off the notes on that slate on to this piece of paper yourself?

A. Yes.

Q. The chief didn't have anything to do with the copying of this? A. He copies his own.

Q. You simply copy your notes?

A. Yes. He copies mine also, but I don't copy his.

Q. Why did you take this copy?

A. Well, for self-protection.

Q. This was not taken for the purpose of making entries in a log? A. Certainly.

Q. When did you take this copy?

A. On this paper?

Q. Yes.

A. The following morning. The notes were still on the slate.

Mr. OLSON.—That's all.

(Testimony of Martin Christiansen.)

Mr. WARREN.—I'd like to offer this in evidence, your Honor, as a copy of the times and speeds of the engine of the "Mikahala" from twelve P. M. on. This covers further times in which we are not interest but that's all I want. This covers in full the operations while pulling on the vessel and the operations of the "Mikahala" in going back to the wharf.

Mr. OLSON.—I agree that the notes from this memorandum be read into the record.

Mr. WARREN.—In evidence you mean?

Mr. OLSON.—Yes. [2852—2021]

Mr. WARREN.—That's agreeable, Mr. Weaver?

Mr. WEAVER.—Yes.

Mr. WARREN.—I then read from this paper produced by the witness: "December 9, 1909, A. M. Bells from bridge to engine-room, S. S. 'Mikahala.' Engines going full speed ahead, 12:22; slow, 12:23; full ahead, 12:25; stop, 12:27; slow ahead, and stop, 12:28."

Q. Referring now to this record showing the first change after twelve M. or twelve midnight to have been at 12:22 A. M., I'll ask you if during this interval between 12 and 12:22 there was any change in the engines as to its speed irrespective of any change of throttle? Will you answer so the reporter can hear?

A. If there was any change? Yes, there was a slight change.

Q. What was that change?

A. Why, the engine going a little faster.

Q. By going faster, what do you mean?

A. Why, making more revolutions.

(Testimony of Martin Christiansen.)

Q. About how much faster would you say her revolutions increased?

A. Well, I couldn't say as to that. There is no indicator there. We go in an engine-room by sound. When a thing stopped, if we want to find out what the cause of it is and finding no cause in the engine-room we know there must be some outward cause.

Q. If an engine, as in this case the engine of the "Mikahala," is going on open throttle at full speed and without any chance of throttle, the engine goes faster, revolves faster, and the revolutions increase, do you know what that indicates, so far as the propeller is concerned?

A. If the ship is going at full speed at the time, yes.

Q. Well, now, answer that, please.

A. If the ship is going full speed through the water and the revolutions of the engines increase, why you're striking another current.

Q. Striking what?

A. A different current. For instance, you enter a ——— or go over a bar or something of [2853—2022] that sort, you strike a different current, you go against a current your resistance against the propeller will be less.

Q. That is going with a current. A. Yes.

Q. And in the absence of any current with the pulling vessel, the engine of the pulling vessel increasing her revolutions, she going full speed attached to a stationary object, what does that indicate?

A. Something has got to move, either the boat is pulling or being pulled.

(Testimony of Martin Christiansen.)

Q. Either what?

A. Either the boat is pulling or being pulled. If the object previously stationary should move, you would naturally increase your revolutions.

Q. Why?

A. Because you are going through the water.

Q. Do you know what is the meaning of the term, slip of a propeller? A. I do.

Q. Will you define that, please?

A. A propeller is like turning a thing on a belt, pulleys. The thing goes ahead fast according to the strain on the object, whereas a propeller that is made fast on the ship or a steamer, it goes through and the matter is not solid. When it moves you see, naturally, it shoves that boat away instead of advancing itself. It's got to shove it away. That's what is called slip; it slips, it does no work. It does the work but it doesn't do the same as if the line is let go.

Q. Now, if a vessel is towing upon a stationary object, her propeller and engines going at full speed and yet the vessel itself not moving through the water, how much slip would you say there would be to the propeller?

A. Well, in that case it's practically all slip. You are not going through taking it, you are not going through the water. You are pushing so much the further away and pulling with your wheel is all slipping.

Q. What is the relative difference between revolutions of the [2854—2023] engine and slip of the propeller. How, do they vary in respect to each other?

(Testimony of Martin Christiansen.)

A. Well, according to conditions, as I've just stated now.

Q. For instance, if slip increased, the revolutions increase or decrease. If the slip increases, I withdraw that. If slipping decreases with the revolutions increase or decrease?

A. Oh, they will increase.

Q. In what proportion?

A. Well, that is a condition hard to determine.

Q. Did you say increase is hard to determine? What is the answer? (Answer read.) So that if between twelve o'clock midnight and 12:22 the revolutions of the "Mikahala's" engine increased without any change of the propeller at all, of the throttle, will you state what causes would contribute or permit that condition to take place?

A. Either the object that you are pulling on is coming towards you or they are moving or slacking off their line on the ship. That would leave this object remain stationary. If you slacked the line you would naturally change your slip at that minute and your engine would speed up.

Q. What would it indicate as to the pulling engine itself, in this case, of the "Mikahala," as to her motion.

Mr. OLSON.—I'll admit that she was going forward through the water.

Mr. WARREN.—That's all.

Cross-examination of M. CHRISTIANSEN.

Mr. OLSON.—Q. Mr. Christiansen—

Mr. WARREN.—One moment. I'd like to ask him if it is material.

(Testimony of Martin Christiansen.)

A. It's really not material.

Mr. OLSON.—Q. Mr. Christiansen, when you came into the engine-room was the [2855—2024] "Celtic Chief" as yet afloat?

A. I couldn't say.

Q. What? A. I couldn't say.

Q. Was the "Mikahala" going forward through the water?

A. I couldn't say that either. I was in the engine-room.

Q. You don't know? A. No.

Q. Where were you immediately before going to the engine-room? A. In my room.

Q. Didn't you look at all outside of the vessel?

A. We go right from the room into the engine-room.

Q. So you have no idea whether the "Mikahala" was stationary or moving at that time? A. No.

Q. How many revolutions per minute was your engine making at the time that you came into the engine-room?

A. Well, I wouldn't say exactly but I should—

Q. What is that?

A. I couldn't say exactly.

Q. Let us have it as near as you can give it.

A. I should judge under those conditions, going full speed, she'd probably make sixty-five revolutions per minute.

Q. Sixty-five revolutions?

A. Yes, when the vessel is being towed. That is where your ship comes in.

Q. That's the "Mikahala's" engine?

(Testimony of Martin Christiansen.)

A. That is at that time.

Q. Now, then, was there any change in the number of revolutions between twelve o'clock when you entered the engine-room until the time entered in your memorandum 12:22 when you were ordered to slow down?

A. Yes, there was a slight change in the speed.

Q. At about what time?

A. I should judge something like sixteen or seventeen minutes after I come on watch.

Q. How's that?

A. Sixteen or seventeen minutes after I come on watch. After twelve o'clock I remember making a remark to the oiler that I thought there would be something doing. [2856—2025]

Q. About sixteen or seventeen minutes later. How many revolutions was the engine making?

A. What's that?

Q. How many revolutions then was the engine making? A. Increased slightly, four or five.

Q. About 69 or 70 revolutions?

A. Just enough to notice.

Q. Had you been on the "Mikahala" on watch in the engine-room on the "Mikahala" prior to twelve o'clock on Wednesday night?

A. Well, I'd been on—no, Tuesday afternoon.

Q. Tuesday afternoon were you in the engine-room at any time when the "Mikahala" was going full speed, Tuesday afternoon?

A. I was there from twelve to six.

Q. From twelve o'clock on Tuesday in the daytime until six in the evening? A. Yes.

Q. Did the "Mikahala" go full speed at any time

(Testimony of Martin Christiansen.)

during that afternoon? A. Yes.

Q. About how many revolutions was she making that afternoon when she was going full speed?

A. About the same, 65.

Q. She was then attached to the "Celtic Chief" was she not and she was stationary, the "Mikahala"?

A. Yes.

Q. So that she was making sixty-five revolutions when going at full speed as far as you observed as long as she was stationary, pulling on the "Celtic Chief" before the "Celtic Chief" began to come. That is correct? A. Yes.

Q. What was the gauge pressure?

A. 85 pounds.

Q. What's that? A. 85.

Q. The gauge pressure was 85? When was that?

A. Of course it may vary a pound or so according to cleaning the fire. When the engine is working and you clean the fire the pressure may go down.

Q. From twelve o'clock on Wednesday night until 12:22, how many pounds pressure did your engine show?

A. She probably varied anything between eighty-five and eighty. [2857—2026]

Q. Eighty pounds? That is, eighty-five or eighty pounds? A. Yes.

Q. That is, eighty-five about the highest that the "Mikahala" developed?

A. That's all she's allowed to carry.

Q. Is eighty-five the highest pounds, the highest amount the "Mikahala" developed at any time you attended to the engine?

A. Yes or any other time.

(Testimony of Martin Christiansen.)

Q. I don't care about any other time.

A. That's all the law allows.

Q. Did you look at the indicator for the purpose of ascertaining whether or not she was carrying 85 pounds? A. I sure did.

Q. Did you observe that more than once?

A. Yes.

Q. And you found she was developing between 80 and 85 pounds pressure? A. Yes.

Q. Do you know the indicated horse-power of the "Mikahala"? A. Not positively.

Q. Do you know the diameter and pitch of her propeller? A. No, I couldn't even state that.

Q. What kind of an engine did the "Mikahala" have? A. Combined engine.

Q. Steam? A. Yes.

Recess.

Q. Mr. Christiansen, what does the ordinary engine, how much does the ordinary engine reduce in revolutions from running free when it is tied up to a solid object?

A. Well, it depends considerably on the kind of an engine. A high-speed engine wouldn't reduce as much as a low-speed engine in comparison.

Q. How's that?

A. It depends considerably on the kind of an engine. A high-speed engine wouldn't reduce as much as a low-speed engine in comparison.

Q. Was this a high-speed engine?

A. No, she makes 85 revolutions at full speed.

[2858—2027]

Q. You take an engine that makes as much as a hundred revolutions, what will it reduce proportion-

(Testimony of Martin Christiansen.)

ately? A. Fifteen or twenty.

Q. Fifteen or twenty revolutions? A. Yes.

Q. How much would an engine making 85 revolutions reduce? A. Depends on the conditions.

Q. Now, you take an engine like the "Mikahala's" 65-revolution engine at high speed, what would an engine of that sort reduce running free and when tied up to a solid object?

A. She was making that tied up.

Q. What does she make when running free?

A. About 85.

Q. 85?

A. 81 or 185, 80 or 85, rather. That's about her average.

Q. Now, then, if 70 revolutions was the highest that the "Mikahala" developed between twelve o'clock and twelve twenty-two, how do you account for the fact that it didn't go up to as high as 85?

A. She was evidently not going ten miles an hour.

Q. Wasn't she going full speed?

A. That doesn't make any difference. Full speed through the water and an engine going full speed is two different things.

Q. What would tend to prevent her?

A. Resistance of course.

Q. Resistance of what? A. Any object.

Q. She was still attached to the "Celtic Chief" even though the "Celtic Chief" was afloat?

A. Yes, or attached to any other object.

Q. Was the only reason that you thought that the engines were running at full speed when you came to the engine-room, the fact that the throttle was open?

A. Pressure on your gauge.

(Testimony of Martin Christiansen.)

Q. And you noticed when you first came into the engine-room that the pressure on the gauge was how much? A. 85.

Q. And her throttles were open? [2859—2028]

A. Yes.

Mr. OLSON.—That's all.

Mr. WARREN.—I'd ask leave for one more question on redirect.

Mr. OLSON.—What is the question?

Mr. WARREN.—On Wednesday night, Mr. Christiansen, and during Wednesday, do you know if there was any difference between the clock in the engine-room and the clock on the deck from which the bell signals were given?

A. There possibly was. They sometimes are a minute or two.

Q. You don't know?

A. I couldn't say. Often there is a little difference between the engine-room clock, anyway. I think we had the best timepiece in the engine-room.

Mr. WARREN.—That's all.

Recess.

Mr. WARREN.—I desire to read in evidence, at this time, your Honor, the deposition of Maurice Barrett, a witness for the libellants. This document itself reads, "Called for the Libellant Matson Navigation Co." only, but it is for the Inter-Island as well.

Mr. OLSON.—It doesn't make any difference.

(Mr. Warren proceeds to read deposition.)

Mr. OLSON.—I move to strike the last answer on the ground that the witness isn't shown to be qualified to answer; he isn't shown to be an expert. I'm

(Testimony of E. P. Faneuf.)

now referring to the last answer on direct of the deposition of Maurice Barrett, on page 7 of the deposition.

(Motion read.)

Mr. OLSON.—And to that, and further on the ground that it is the conclusion and opinion of the witness.

The COURT.—I am going to reserve my ruling on this point.

(Mr. Olson reads cross-examination; Mr. Warren, redirect; Mr. Olson recross.)

Mr. WARREN.—I offer this deposition in evidence.

The COURT.—It will be received in evidence subject to my ruling [2860—2029] on the reserved question.

Friday, October 20, 1911.

[Testimony of E. P. Faneuf, for Libelants.]

Direct examination of E. P. FANEUF, a witness called on behalf of Libellants Matson Navigation Co. and Inter-Island Steam Navigation Co., and sworn.

Mr. WARREN.—Q. What is your age, Mr. Faneuff? A. I am forty years of age.

Q. And your occupation? A. Engineer.

Q. And how long have you been an engineer?

A. Twelve years, sir.

Q. Engineer of steam vessels? A. Yes, sir.

Q. And in December, 1909, how were you employed?

A. As chief engineer of the S. S. "Likelike."

Q. Of the Inter-Island Co.?

(Testimony of E. P. Faneuf.)

A. Inter-Island Company.

Q. And you were present at the operations with the "Likelike" at the time the "Celtic Chief" was ashore? A. Yes.

Q. And went out there on Wednesday, the day she came off? A. Yes, sir. No, sir, on the 8th.

Q. What's that? A. December the 8th.

Q. December the 8th, well that would be Wednesday? A. Yes.

Q. And she came off the night of December 8?

A. Yes, sir.

Q. What were your watches?

A. Six-hour watches, sir.

Q. And when were you on duty?

A. Six to twelve A. M. and P. M.

Q. Six P. M. to twelve midnight?

A. Yes, sir.

Q. And you were followed by whom?

A. The first assistant engineer, Chas. Strohlin.

[2861—2030]

Q. And during that time the "Likelike" was attached to the "Celtic Chief" with a hawser?

A. Yes, sir.

Q. Now, when did the "Likelike" commence towing on the "Celtic Chief"?

A. On the 8th of December.

Q. What time of day?

A. 12:29 P. M., I believe.

Q. Have you brought with you an extract from the ship's log? A. I have, sir.

Q. Relative to the time— A. Yes.

Q. That your engines were working at full speed and the variations of the engine? A. Yes, sir.

(Testimony of E. P. Faneuf.)

Q. Will you produce that please? '

(Witness produces document from his pocket.)

Q. And you went on duty, you say, at six P. M. of December 8? A. Yes, sir.

Q. Now, do you know how the ship's engine was running at that time? A. I do.

Q. How? A. Full wide open, sir.

Q. And how long after that time, six P. M., when you went on duty, did it continue to run wide open without change of throttle?

A. Well, I couldn't say without referring to the log.

Q. Have you any idea at all?

A. No, sir, without reference to the log.

Q. That is, it might be a very short time only, even as much as a few minutes?

A. Might have been apulling a short time or we might have stopped the engines to adjust the line or something of that description.

Q. Now, this document you have produced, as, you say, a precise copy of the log of the "Likelike," engineer's log for December 8 and 9?

A. Yes, sir, it is.

Q. 1909. You have taken this off and compared it very carefully? A. Yes, sir.

Q. You know this corresponds absolutely?

A. Sure!

Q. With the log itself?

A. Yes, sir. [2862—2031]

Mr. OLSON.—We have no objection to it; this document may be admitted as if it was the log itself.

Mr. WEAVER.—On behalf of the Miller Salvage Co. we admit it is a true copy and may be taken in

(Testimony of E. P. Faneuf.)

the place of the log.

Mr. OLSON.—Same for the claimant.

Q. Referring to this log, can you say how long this engine continued at full speed?

A. By this paper, December 8, we were running full open.

Q. For how long?

A. Until the ship come off the reef.

Mr. OLSON.—Until you went off the watch?

The COURT.—Yes.

Q. At least until 12 o'clock midnight at which time you went off duty? A. That's right.

Q. Then you were succeeded by Chas. Strohlin, your first assistant?

A. Yes, I was replaced by Strohlin, my first assistant.

Q. The entries in this log following 12 o'clock midnight, December 8, were made by whom?

A. The entries into the note-book was made by the first assistant engineer from 12 o'clock midnight to 6 A. M.

Q. Now, and how were the entries made in the log itself as to his watch?

A. I copied all entries from the note-book into the log.

Q. From his notes?

A. From his notes, yes.

Q. What was his part afterwards with his notes, if any?

A. When the note-book is full, why, it's generally destroyed, thrown away.

Q. Is that a temporary or permanent record?

A. That's merely temporary until I can copy it.

(Testimony of E. P. Faneuf.)

Q. There is no question but what that corresponds to a slate on another vessel is there, Captain?

A. Yes, it corresponds to a slate. It's the same as a slate.

Q. When did you make the transcription from his notes into the log?

A. On the 9th. [2863—2032]

Q. And you know those were correctly transcribed? A. Yes, sir.

Q. What is your duty, if any, as chief engineer, and the duty of your assistant with respect to any records in the engine-room of this kind?

A. The law compels us to keep a record of all movements of the ship.

Q. What law is that? A. Federal law.

Q. And this is the record kept in compliance with that law, as you understand it? A. Yes, sir.

Q. So that you can state that the entries in the log and this paper are the—constitute the record and the only record that is kept of those movements that night? A. This is the only one.

Mr. WARREN.—Now, I desire to offer this document in evidence, your Honor, as a copy and admitted to be a true copy of the log itself.

Mr. OLSON.—Object to the offer on the ground that it's a self-serving declaration and that it's hearsay, and on the ground that it's incompetent, irrelevant, and immaterial.

Mr. WEAVER.—Same grounds for the Miller Salvage Co.

The COURT.—I'll reserve the question and take it up later.

Mr. WARREN.—Under the circumstances, your

(Testimony of E. P. Faneuf.)

Honor, may further questions be put subject to reserved ruling in order if it is allowed it won't be necessary to recall the witness?

Then I take it that this document may be marked for identification pending the ruling of the Court.

(Marked Libellant's Exhibit "M," for Identification.)

Q. What is the horse-power of the "Likelike"?

A. About 340.

Q. You have taken cards yourself?

A. Yes, sir.

Q. With your engine at full speed, how many pounds steam pressure do you carry?

A. 150. [2864—2033]

Q. And what is your steam capacity?

A. 150.

Q. How many revolutions would this engine make at full steam and pressure if tied fast to a stationary object, that is, the vessel going at full speed in the water but held back immovable?

A. The engine would make about 98 or 100 revolutions per minute.

Q. 98 or 100? A. Yes.

Q. And how many if running free?

A. Running free all the way from 130 to 138.

Q. Now, if the ship's engine were running full speed and the pressure were full steam pressure and made fast to an immovable object, as, for example, a ship fast ashore, and that being the condition of the engine and there being no change of the throttle, if the revolutions of the engine should increase, what would that signify so far as the propeller and movement of the vessel, of the towing vessel is concerned?

(Testimony of E. P. Faneuf.)

A. It would signify that the ship was free from any object.

Q. What is the slip of a propeller? Define it.

A. The slip of a propeller is the difference between the velocity of a screw revolving in the water and the velocity of the ship in the water.

Q. When a ship is held fast, what would you say, what proportion would her slip bear to her revolution? A. As to slip? It would be all slip, sir.

Q. And the slip varies with the revolutions, how?

A. Well, if it be, if the ship was tied to an object, it would be all loss or all slip.

Q. Now, I understand you when the ship moves forward her revolutions increase? A. Yes.

Q. Now, how do they increase in their relation as compared with the slip?

A. They increase, compared with the slip, as soon as the vessel is free and moves then the slip [2865—2034] begins to be less and the faster she goes the less the slip.

Mr. OLSON.—I'll admit that the less the slip the greater the number of revolutions, but I, of course, do not admit the proportion.

Q. Now, I'll ask you what is the relative proportion between decrease of slip and increase of revolutions?

Mr. OLSON.—I object on the ground it does not appear that a proper foundation is shown; furthermore, that it doesn't appear that this witness is qualified to answer.

Q. I'll ask you, please, to state the pitch of the "Likelike's" propeller.

A. The pitch of the "Likelike's" propeller is 8

(Testimony of E. P. Faneuf.)

foot, 3 inches; 8 feet, 3 inches. And the diameter of her propeller?

Q. And the diameter of her propeller?

A. That is 8 foot, 3 inches.

Mr. OLSON.—The pitch and the diameter are the same?

A. Yes, sir.

Q. Now, then, referring to a tow vessel having a propeller of the pitch and diameter of the “Like-like’s” and a vessel otherwise corresponding to the “Likelike” in horse-power and engine capacity, such as you’ve testified, what, in that case, would be the proportionate or relative difference between the slip and revolutions? In what proportion would revolutions increase?

A. Well, that would be very hard to compute. It all depends on the resistance of the ship on the propeller, the direction of the ship, the lines of the ship—everything. If a ship is fast, according to the rules, it would be all pitch, that is, all slip. And if it had, say, for instance, the vessel was off the dock, say eight fathoms, the slip would be greater.

Mr. WEAVER.—That’s due to what you call suction friction?

A. Yes.

Q. The suction friction would be greater as the vessel is free?

Mr. OLSON.—I object to the question and ask to have the answer stricken on the ground it is immaterial. [2866—2035]

Mr. WARREN.—I’ll withdraw that question and ask you instead: It will depend, then, on how hard

(Testimony of E. P. Faneuf.)

or how easy the ship might be coming off the reef for one thing, would it?

A. Yes, sir.

Q. What the increase in revolutions would be?

A. Yes, sir.

Q. And you don't go any further than just stating that there would be an increase as the ship came?

A. Yes.

Q. And when the ship got free of the reef it would be almost running free?

Mr. OLSON.—I object to that on the ground it assumes something the witness hasn't testified to and furthermore on the ground it is leading.

The COURT.—It is leading.

Mr. WARREN.—Subject to the eventual ruling of your Honor, I close my direct.

Cross-examination.

Mr. OLSON.—Q. When you said that the "Like-like's" horse-power was 340, you mean that's her indicated horse-power? A. Yes, sir.

Q. And when you referred to her licensed steam pressure that is the highest amount that her gauge will show in any event? A. No, sir.

Q. That's the highest you are permitted to go?

A. That is what we're allowed.

Q. You, as engineer of the "Likelike," would not permit a higher steam pressure than that to be used?

A. I would not.

Q. And, as a matter of fact, while you have been her engineer, you have not permitted it to go any higher than that, have you?

A. I do not. [2867—2036]

(Testimony of E. P. Faneuf.)

Q. While you were on watch between six P. M. of Wednesday, December the 8th, until twelve o'clock that night, will you state what the actual steam pressure was as shown by the gauge?

A. Well, as to that, the steam gauge will vary from two to three pounds; sometimes you will have 148 or 149. It is very hard to keep pressure on the gauge to the pound with coal. That's a very hard matter to do with coal as fuel.

Q. State as nearly as you can.

A. I should say she averaged about 149.

Q. It would vary a pound or two on one side or the other? A. Bound to vary, yes, sir.

Q. Was that constant to that extent, allowing for variations, during the whole six hours?

A. Yes, sir.

Q. You received no orders then, while you were in the engine-room during those six hours?

A. Well, I couldn't say without referring to the copy.

Q. You have seen it, haven't you?

A. I've seen it. I haven't memorized it.

Q. You are now referring, are you, to a copy from the log-book for December 8 and 9? A. Yes.

Q. Did you receive any orders in the engine-room from six P. M. to twelve of Wednesday night?

A. No, sir.

Q. Do you know how many revolutions your engines were making during those six hours, per minute? A. Yes, sir.

Q. How much? A. 98.

Q. How much? A. 98.

(Testimony of E. P. Faneuf.)

Q. 98 per minute? A. Yes.

Q. Was that constant? A. That's average.

Q. Might vary how much?

A. Might vary one revolution.

Q. Might be 97 one time, 98 another, and 99 another. [2868—2037]

A. If the steam varied two, the revolutions would vary about three-fourths of a revolution.

Q. How were you able to determine it was making 98? A. By register.

Q. You have a revolution register, have you?

A. Yes.

Q. And did you observe that in the course of the six hours?

A. Yes, sir. Every two hours its recorded.

Q. How are you able now to remember that it was an average of 98? A. By the log.

Q. During those six hours? A. Yes, sir.

Q. Doesn't the reference to register to the revolutions per minute refer to a time when you were not on watch, in that log?

A. Not from six to 12 P. M.

Q. There is nothing there in the log showing what the revolutions were from six to twelve P. M., is there? A. No, sir.

Q. Then you don't know from this log what the revolutions were from six P. M. to 12 P. M.?

A. 98 average.

Q. How do you know that from that log?

A. Revolutions per minute, 98. (Witness points to exhibit.) I don't keep a record of the hour, simply take the average.

(Testimony of E. P. Faneuf.)

Q. Do you mean to say that this note here, revolutions per minutes, refers to the six hours to twelve P. M.?

A. This refers to, no, sir, on the night watch from 12 A. M. to 12 P. M.

Q. That's what that refers to?

A. That's what that refers to.

Q. This record of 98 revolutions per minute, 98, refers to 12:29.

A. When the vessel was going full ahead.

Q. There is nothing on this memorandum showing what the revolutions were between six P. M. and twelve P. M. while you were on watch?

A. No, no times. [2869—2038]

Q. That does not refer to between six P. M. and twelve? A. It does.

Q. How do you make that out when your signature is underneath that record and the record purports to be from 12:29 to 5:23 P. M.?

A. I am compelled by law to sign the log.

Q. Doesn't that note refer to the time between 12:29 and 5:23 P. M.? A. Yes, sir.

Q. It does not refer, does it, from six P. M. to twelve?

A. It refers from 12:29 P. M. to 12 o'clock midnight.

Q. It does? A. It does.

Q. If you are required by law to note the revolutions per minutes, how does it come that there is no note here of revolutions of the diminished revolutions per minute while you were stopping?

A. I did not say that the law required us to record the revolutions.

(Testimony of E. P. Faneuf.)

Q. It requires you to record all movements of vessels such as revolutions and movements in harbors. Isn't it the fact, Mr. Faneuf, that this note here that you've said refers from 12:29 to 12 o'clock that night, is a note that you took from Mr. Strohlín?

A. It is a copy.

Mr. WARREN.—I'd like at this time to have this portion read so that the record will show to what you are referring.

Mr. OLSON.—Rev. per min. 98. That's the first one. Now, the second is exactly the same and those are the only two appearing on the memorandum and I am perfectly willing that that should appear in the question and that those are the notations to which I refer in the question. I'm willing, furthermore, that the record shall show that when I referred to the notation of revolutions per minute 98, I was referring to the first of those two notations.

Q. Now, then, Mr. Faneuf, isn't it true that the first of these notations was copied by you from Mr. Strohlín's notes? A. Yes, sir.

Q. Into the log?

A. Yes, sir. [2870—2039]

Q. So that you did not make that notation originally? A. Not in the note-book.

Q. You didn't make any notation at all in the note-book of the revolutions per minute between the hours of six and twelve? A. I did not.

Q. And did you transfer them into the log-book?

A. No, sir, I did not, that is merely the average.

Q. Did you transfer the note there?

A. This there. (Indicating.)

(Testimony of E. P. Faneuf.)

Q. Are you now referring to the first of these two notes, revolutions? A. Yes.

Q. Haven't you stated here that the first of these two notes of the memorandum, revolutions per minute, 98, was transferred by you from Mr. Strohlin's notes? Isn't it true that you transferred that from Mr. Strohlin's record? A. Yes, sir.

Q. Now, then, Mr. Faneuf, isn't it the fact, then, that you did not transfer any note of your own into the log for the six hours between six P. M. and twelve P. M.?

A. That record there includes the whole time.

Q. Then this note is a correct copy of the notes made by yourself in the engine-room and the notes made by Mr. Strohlin in the engine-room, is it?

A. In the average, yes. It's a correct copy.

Q. You simply made up in your log from those notes what you regarded to be the substance of those notes; isn't that the fact? Isn't that so?

A. That is an average of the whole.

Q. Then you did not transfer every word in the note-book to the log-book?

A. I did not say that I did.

Q. Well, now, then, it's a fact that you did not, isn't it? Where is that note-book?

A. I couldn't say, sir. [2871—2040]

Q. Is it still in existence? A. I believe not.

Q. What makes you think it's not?

A. Because as soon as they are filled we throw them overboard.

Q. You are sure this book was filled and thrown overboard? A. I am sure of it, yes, sir.

(Testimony of E. P. Faneuf.)

Q. Now, there might have been other notes in that note-book for December 8 and 9 which *were* do not appear in this log?

A. As to movement of vessel, it's all in there.

Q. But as to revolutions and that sort of thing?

A. The average is there.

Q. There might have been other notes that do not appear in this log, isn't that so—other records, other notes and observations? Isn't that so?

A. The notes are recorded in full with the average of revolutions, the steam pressure.

Q. I'm asking you if there might not have been other notes, more detailed notes than those in this log in the note-book itself?

A. Pertaining to revolutions, there was.

Q. Yes. Now, then, do you know, can you now testify of your own recollection whether or not the revolutions were 98, an average of 98 per minute during the six hours that you were on watch?

A. Yes, sir.

Q. You are able to say that? A. I am.

Q. How do you know that the revolutions would be 130 or 138 per minute running free in the case of the "Likelike"? A. By register.

Q. You have tried it? A. I have.

Q. Actually tested it? A. Yes, sir.

Mr. OLSON.—That's all.

Mr. WEAVER.—No cross-examination.

Mr. WARREN.—Referring to variations of revolutions that have been just discussed, what would those variations be? You've taken the average, you've testified that 98 was the average and they

(Testimony of E. P. Faneuf.)

might vary one or two.

A. Well, I take the register and record it every two hours. In two hours she might run 98 4/10, the average for the two hours; the next two hours she might run 97 6/10. [2872—2041]

[Testimony of R. Nelson, for Libelants.]

Direct examination of R. NELSON, a witness called on behalf of Libellants, Inter-Island Steam Navigation Co., and sworn.

Mr. WARREN.—Q. What is your age and present occupation, Captain?

A. Thirty-five years; master of the steamer “Helene” at present.

Q. How long have you been going to sea?

A. Since 1894.

Q. And how long have you been a master?

A. Since 1902.

Q. In what waters?

A. Master only in Hawaiian waters, waters of the Hawaiian Islands.

Q. What vessels, steam or sail?

A. Steam vessels altogether.

Q. And you were master of the “Helene” in December, 1909, when the “Celtic Chief” was ashore off the harbor? A. I was.

Q. And your vessel took part in the operations out there? A. It did, yes, sir.

Q. What time did the “Helene” take the “Mauna Kea’s” hawser?

A. Tuesday morning, about—you want the time?

Q. About, as near as you can give it.

A. About six forty-five or seven o’clock in the

(Testimony of R. Nelson.)

morning; something like that.

Q. On? A. Tuesday.

Q. Tuesday? A. Yes.

Q. And what did the "Helene" then do with that line?

A. The "Helene" made fast to the line, the twelve-inch [2873—2042] line with a seven-inch line at the time that the twelve-inch line was fast to the "Mauna Kea," before the "Mauna Kea" let go, and after we got the seven-inch line fast to the twelve-inch line, the "Mauna Kea" let go of the end and hove up her anchor and went inside. The "Helene" then picked up her anchor and slacked out the full length of that seven-inch line that was fast to the twelve-inch line and laid down both anchor one after the other and ^{then} hauled back by means of this seven-inch line to within twenty or thirty feet of the end of the twelve-inch line and put out two other parts of the seven-inch line through a thimble and made all three ends fast to the "Helene," parcelled them up and got ready to tow.

Q. About what time did you start to tow?

A. About eight o'clock we were all ready.

Q. How many anchors did you have out?

A. Two anchors were out from the "Helene."

Q. What were their weights, if you know?

A. They are approximately two thousand pounds each, more or less. A few pounds either way.

Q. How much anchor chain did you have out on the port anchor?

A. Approximately sixty fathoms.

Q. And the starboard anchor?

(Testimony of R. Nelson.)

A. About ninety fathoms, the starboard anchor was let go first.

Q. And how long did you continue to pull on the "Celtic Chief"?

A. The total time we were connected up was in the neighborhood of forty hours.

Q. What is that?

A. I say the total— [2874—2043] that we were connected up was somewhere around forty hours, but we were not pulling full speed all that time.

Q. Then, at what times were you pulling full speed and what times at reduced speed?

A. I don't carry all that in my mind exactly. We pulled full speed before and after the time that it was supposed to be high water, and other times, when it was low water, we were pulling at moderate speed.

Q. Now, Captain, were there any variations in the pulling?

A. There was one time—there were several times when she was stopped for different lengths of time.

Q. For what purpose?

A. For fixing the tow-line and one other time we stopped to fix the engine, the "Helene's" engine.

Q. How long were those stops?

A. The total time was about three hours of stoppage.

Q. The two together?

A. Altogether, I think it was three times.

Q. When was the last stop made?

A. I think Wednesday afternoon.

Q. About what time in the afternoon, if you remember? A. Between two and three o'clock.

(Testimony of R. Nelson.)

Q. After that were there any variations in the pulling until the ship came off?

A. Oh, yes, there were variations in the pull. We didn't start to pull full speed until towards eleven o'clock on Wednesday night when it was approaching high water.

Q. And having gone full speed about that time that night how long did you continue at full speed?

A. Continued at full speed until the vessel began to [2875—2044] move, until she came off clear of the land.

Q. Then what happened?

A. The line was cut on board of the vessel, then we slowed down, stopped, and hove the line in.

Q. Now, during your pulling operations and particularly when your line, when you were going at full speed, what was the condition of your line to the "Celtic Chief"?

A. Of the twelve-inch hawser, you refer to?

Q. How was it with respect to the water?

A. It was as taut as we could possibly get it.

Q. Well, was the line in or out of the water?

A. Part of it was at the surface of the water. The lowest part of the bite of the line was on the surface just floating.

Q. What kind of a line did you have?

A. We were pulling with a twelve-inch manilla hawser, most of it.

Q. New or old? What kind, what was its condition?

A. It was a good line. I couldn't say it was brand new but it was a good line, plenty strong enough for

(Testimony of R. Nelson.)

any strain that we were able to put on it. It had been pulled on by the "Mauna Kea" before we took hold of it. It might have been new when she took it, I couldn't say about that.

Q. About how long was your line?

A. The twelve-inch line was approximately six hundred feet from the end of the quarter of the "Celtic Chief," more or less.

Q. Was was the object of placing the anchors out ahead of your vessel?

A. To put an extra strain on the line; to obtain all the extra pulling power we could get by means of the winches. [2876—2045]

Q. Tell us what you did in that connection. How did you work with those anchor lines?

A. The two anchors were out ahead of the "Helene," placed in the most advantageous position to hold the strain, and after we were connected up and started pulling, we took in all the slack of each chain. We can take in both chains at once on the "Helene." We took in all the slack that it was possible to take in by means of the power of the winches and that we kept taut. If, at any time, there was any slack on the chain it was taken in. Sometimes, if a heavy swell might surge the "Helene" back a little bit we would take in a few links of chain, as much as we could get every time. That was kept taut during the whole of the operations until the vessel came off.

Q. What were the weather conditions on Wednesday, Tuesday and Wednesday, Captain?

A. Generally fine weather.

Q. How was the sea?

(Testimony of R. Nelson.)

A. There was a moderate swell coming in from between south and east, I couldn't give the exact direction. Approximately about south, southeast, I should say.

Q. And how does that direction compare with the line of the "Celtic Chief" as she lay ashore? How did that swell strike the vessel?

A. It struck us on our port bow, that would be the starboard quarter of the "Celtic Chief."

Q. About how high would you say those swells were?

A. Well, there were some bigger than others, of course. On an average they might have been eight feet high. Some high ones might have been ten or twelve feet. An average would have been eight or ten feet.

Q. That's eight or ten feet above sea level?
[2877—2046]

A. No, from the bottom of one to the crest of the next one.

Q. Referring to the operations of the boats from the "Mikahala" and the "Helene" in lightering, would those boats in your judgment, and were they, in any position of danger in those operations in your judgment?

A. Not in extreme danger. They were in more or less danger by being alongside of the vessel by reason of the cargo that was being suspended over the side on the burthen arms. If the swells happened to come in when the sling of fertilizer was just on the gun-whale of the boat, if it got in the right position it would capsize the boat. Except for that I don't

(Testimony of R. Nelson.)

think there was any danger.

Q. Where were you, Captain, during the pulling operations?

A. That is rather a general question. I was all over the "Helene," then on board of the "Celtic Chief," into the small boat, and all around.

Q. You went aboard the "Celtic Chief"?

A. Between the "Helene" and the "Celtic Chief," that's the only boats I was on board.

Q. Did you go around on the starboard side of the "Celtic Chief"?

A. I went aboard of it, no port side.

Q. What's that?

A. I went on the port side of the "Celtic Chief" to get aboard.

Q. Did you see the "Arcona" come out?

A. I saw her when she came in the neighborhood of the "Helene," yes.

Q. And what did she do on first coming out?

A. Circled around there a little bit and then dropped [2878—2047] anchor a little outside of the position of the "Helene."

Q. Approximately where?

A. The first time she dropped anchor was approximately right dead astern of the "Celtic Chief."

Q. And then what did she do?

A. She took in part of the lines and sent a small manilla line in her boat to the "Celtic Chief" and tried to haul in position to tow.

Q. Haul what in position? A. Sir?

Q. Haul what in position?

A. Tried to haul the "Arcona" into position. They

(Testimony of R. Nelson.)

couldn't very well back in, or they didn't. They hauled in with a manilla line or part of that line.

Q. Then what happened?

A. Then they pulled up their anchor and moved to another position to northward, more to eastward.

Q. What place was that?

A. As near as I can remember, the second time she dropped her anchor further up ahead of the "Mikahala," about two or three times of the length of the "Mikahala." Ahead of the "Mikahala," somewheres in that general neighborhood.

Q. And then what did she do? A. Then they—

Q. Then what did the "Arcona" do?

A. They hauled back again with another line; took the manilla line out again, a small line and hauled back in the position where they could get the wire out.

Q. And then what else? Describe what they proceeded to do.

A. What I saw them do was to get wires out. That was, I think, forenoon, about somewheres about twelve o'clock. They got into position finally and ran their two wires from the "Arcona" [2879—2048] to the "Celtic Chief." One of them was made of two parts connected in the middle with a shackle. I saw that. Then at about three o'clock in the afternoon, between half-past two and three somewheres, when they got those wires connected up. Then they went ahead with the vessel for some reason or other, with their engine, and parted those wires or one of them—I wouldn't say they parted both of them; parted one of them anyway.

(Testimony of R. Nelson.)

Q. Are you sure there were two?

A. I think, I'm quite certain of one. My impression at the present is that there were two wires out.

Q. After she parted that what happened?

A. Then they got other lines out and got back into position again, about the same position as they were in before.

Q. What kind of a line at that time?

A. I'm not certain. My impression is they got out a manilla line to haul back with and then got out a wire line. They finally got out three lines. That was finished about dark, about seven o'clock that evening. Somewheres about that time when they finished that. And those wires were the one that were there until the vessel came off, as near as I can remember.

Q. Were those the only operations of the "Arcona" with respect to wires or putting of lines aboard, that you saw?

A. That was all that I have any recollection of. Twice they put out wires. Broke them the first time, then the second time the wires remained there until the vessel came off. That was the only operations that I saw.

Q. Where were you between three and five o'clock that [2880—2049] afternoon?

A. Wednesday afternoon?

Q. Yes.

A. I was on board the "Helene" at that time. Between three, after four, about three o'clock I was on board the "Celtic Chief" fixing the line.

Q. Were you on board the "Celtic Chief" more than once?

(Testimony of R. Nelson.)

A. During the afternoon we had to fix the towline. I came back on board of the "Helene" around four o'clock in the afternoon.

Q. Did you leave the "Helene" again after that?

A. No, not after that.

Q. Well, the "Arcona" having gotten those two lines connected up along toward six or seven o'clock, what did the "Arcona" do after that?

A. I couldn't see that she did anything further except keep the searchlight running between the, playing between her stern and the stern of the "Celtic Chief."

Q. Did you, after that, observe those lines of the "Arcona" going to the "Celtic Chief"? Did you see them?

A. I could see parts of them at various times.

Q. How frequently?

A. Any time that I might look at that I could see them running from the "Arcona's" stern until dark. After dark you could see them occasionally when the search-light happened to be in a position to show them.

Q. Between dark and the time the search-light went on, could you see those lines of the "Arcona"?

A. Well, I think the search-light was started up about dusk so that there was hardly any interval, as I recollect, that the search-light wasn't playing somewhere; not always where you could see the lines, but I think the search-light was going all through that evening, as near as I can recollect. [2881—2050]

Q. Do you remember about when it came on the first time?

Mr. OLSON.—I submit he had already answered.

(Testimony of R. Nelson.)

A. That is the best of my recollection, they started the lights just about dusk, that is, when it began to get dark.

Q. I'll ask you, from the time the light was on, about how frequently did you actually observe the lines, take note of them?

A. Well, I might say that every time I looked over there, naturally looked to see what was going on, looked at the lines, I could see them.

Q. Was there any change in their position, as you have described it, as far as you know?

A. None that I could distinguish, no, sir.

Q. Up to the time when the "Celtic Chief" came off?

A. Up to about seven o'clock in the evening after they got their lines fixed and stopped operations I didn't see any change in the lines.

Q. If there had been any change would you have noted it? A. I think that I would, yes, sir.

Q. That is, if those lines had been pulled up taut?

A. If the lines had had a strain on so as to bring them about the surface of the water I would have seen them somewheres between the stern of the "Arcona" and the "Celtic Chief."

Q. As it was, how much of those lines would you say was out of the water where they left the stern of the "Celtic Chief"?

A. Well, there might have been forty or fifty feet of the length of the wire. She was somewhere about twenty feet out of [2882—2051] the water astern and they went down on an angle say of, I couldn't say. They went down so that they looked to be lead-

(Testimony of R. Nelson.)

ing down to the bottom.

Q. And at the "Arcona" end approximately how much?

A. I think there was less because her stern was lower down, but they led right down into the water. They didn't lead straight out as a line that was taut would lead.

Q. What position did the "Arcona" have with respect to your position, the "Helene"?

A. Approximately side by side.

Q. How far from you?

A. Only between one hundred and two hundred feet about.

Q. Do you know whether or not she changed her position at all up to the time the "Celtic Chief" came off?

A. From what time? She changed her position once, yes.

Q. From six o'clock on?

A. Not to my knowledge. I didn't see any.

Q. If she had, would you have known it?

A. I think I would, yes.

Q. Did you see the buoy of the Miller anchor?

A. I could see that at all times I might look at it.

Q. Where was it?

A. It was in the water between the quarter deck of the "Arcona" and the upper deck of the "Helene" where I was most of the time, almost in line between that and the quarter deck of the "Arcona."

Q. About how close to the "Arcona"?

A. Somewheres around fifty feet, I guess.

Q. Did the relative position of that buoy to the

(Testimony of R. Nelson.)

“Arcona” change, at any time, as far as you know?
[2883—2052] A. Not so far as I could see.

Q. Before the vessel came off?

A. I couldn't see any difference in the relative position of those; as near as I could them, neither one of them changed.

Q. How frequently did you observe the buoy in connection with the quarter deck of the “Arcona”?

A. I could see that buoy all the time; that is, whenever I looked at it because lights on the quarter deck of the “Arcona” lit up the water between the “Helene” and the “Arcona” lights that were up under the structure there somewhere cast a light down on the water and that buoy so that I could see that any time, independent of the search-light. The search-light beam was more towards the “Celtic Chief” and the water between it. This buoy I could see by other lights that were on the “Arcona's” stern quarter deck.

Q. When did the “Arcona” first move from that position that night? A. That night?

Q. Yes.

A. As near as I recollect, she didn't move until the “Celtic Chief” was almost on top of her and then they steamed away quick, as quick as they could, in time to escape a collision.

Q. From where you were, would you say approximately how near did the “Celtic Chief” approach the “Arcona”? What was the least distance between the vessels?

A. Well, I could only guess at that. Might be—

Q. Your best judgment.

(Testimony of R. Nelson.)

A. In the neighborhood of twenty or thirty feet the way it seemed to me. Looked to be very close. I expected to see they hit any minute.

Q. In what direction did the "Celtic Chief" move in coming [2884—2053] off?

A. She moved directly astern the first part.

Q. Then what?

A. Then after our line was cut, two lines on the port side of the "Celtic Chief," I think they cut,—

Q. That would be what lines?

A. That would be the line of the "Helene" and the other line that was fast to the "Likelike."

Q. Then what?

A. I think her stern was pulled a little to the starboard side by means of the "Mikahala," so that after she first came off she didn't continue in a straight line directly astern.

Q. Did you see that? A. I could see that, yes, sir.

Q. Did you see the lightering operations conducted by the Inter-Island steamers and boats?

A. I know of them, yes. I saw part of the operations.

Q. Were those going on when you were on the "Celtic Chief"?

A. They were rigging up the gear the first time I went over there.

Q. Did you see the winch of the "Celtic Chief"?

A. I looked at it, I had a glance of it. I didn't look at it very closely.

Q. Did you see it operating?

A. Yes, it was in operation part of the time.

Q. Did you observe it enough to be able to judge of

(Testimony of R. Nelson.)

its conditon or capacity to any extent?

A. No, I wouldn't say that.

Q. Did you take any note of the number of slings in a bag, bags in a sling?

A. Not particularly, except that I noticed they were smaller loads than the Inter-Island boats generally handle. [2885—2054]

Q. What difference would you say, or how would you compare the loading operations or unloading operations at the "Celtic Chief" with the ordinary freight unloading and loading operations of the Inter-Island steamers at the various Inter-Island ports, as a general rule, as to danger.

Mr. OLSON.—Object to the question on that ground that it's immaterial.

Q. As to under similar conditions of weather and sea.

The COURT.—I allow the question.

A. I think there was considerable more danger to the boats alongside of the "Celtic Chief" than there would be alongside of an Inter-Island steamer.

Q. Why?

A. For the reason that a load of fertilizer alongside of the "Celtic Chief" was hung from the yardarm by means of a burthen which was fast to a pin on deck and couldn't be raised after it was lowered and, therefore, if the boat wasn't in the position to receive that load, why, the men might get hurt; they cannot get it back again, it can only go down. Whereas, alongside of the Island steamers they are prepared to take that load up immediately and run it up clear of the boat.

(Testimony of R. Nelson.)

Q. Is there any difference in the way the swell affects a boat ashore and a boat afloat?

Mr. OLSON.—Now, if the Court please, I submit that's leading.

The COURT.—I allow the question.

A. I think that the swell is more dangerous to a vessel more dangerous to boats alongside of a vessel that's fast on the bottom than to one that's afloat, for the reason that boats alongside of a steamer that's afloat [2886—2055] the steamer moves up at the same time that the boat does, whereas where a vessel is fast on the bottom, the swell runs higher and is very dangerous, the same as alongside of a rock.

Q. In your judgment, would operations such as were conducted at the "Celtic Chief" involve any danger to the men in the boats?

Mr. OLSON.—I object to the question on the ground it has been asked and answered.

The COURT.—The objection is overruled.

A. Please repeat that question.

(Question read.)

A. I should say that it did to a certain extent; to the extent that they were liable to be crushed by these loads of fertilizer that were not able to be hoisted up out of the water. That is the only danger that I can see to them.

Q. Any danger of that kind in the Inter-Island trade under similar conditions of weather and sea?

A. Not that same danger, because a load of freight outside of an Inter-Island boat is always under control of the man who is handling the book. He can take it up whenever he sees any big swell or the boat

(Testimony of R. Nelson.)

is not in position. Alongside of the "Celtic Chief" the load hung there. He would be unable to move it any way except down.

Q. In your judgment, was the "Celtic Chief" in any position of danger as she lay on the reef?

A. I think she was, yes.

Q. Danger of what?

A. Danger of having her hull stove in, her bottom.

Q. How could that occur?

A. By a very slight increase [2887—2056] in the size of the swell she could easily pound enough to cause her to leak.

Q. In view of the weather conditions prevailing, and the swell as you have testified, I'll ask you if, in your judgment, I'll ask you what would have been her danger, in your judgment, if she had been unassisted by any boat or anchor?

A. I think she undoubtedly would have remained there and sooner or later would have pounded enough to start her leaking and then if no assistance came she probably would have remained there until she broke up.

Q. What position would she tend to take on the reef if unassisted under those conditions?

A. That I couldn't say exactly. Vessels very often tend to go broadside to the swell and to the reef if left without any assistance. In fact, they naturally always do. In this case I couldn't say what would happen for certain. I can only say what vessels do under similar circumstances.

Q. Have you ever seen vessels under similar circumstances?

(Testimony of R. Nelson.)

A. I have seen vessels. One vessel went ashore close by there and was a total wreck in a few days.

Q. How long?

A. Few days, a week or so. The "Edward O'Brien" got ashore there with a load of coal. She was not assisted in any way. She filled and sank and pounded to pieces in that neighborhood.

Q. How far aground do you think the "Celtic Chief" was?

A. I am not prepared to say that because I didn't take soundings.

Q. You don't know the depth of the water around there at all?

A. I don't know anything [2888—2057] about that; no, sir.

Q. Do you know what kind of a bottom she was on?

A. I know that I saw the white water all around her caused by the coral being ground up, so I surmise she must have been on a coral bottom.

Q. What does white water of that kind indicate?

A. Indicates that coral has been ground up and carried away by the current.

Q. About what time did you first notice any motion of the "Celtic Chief" in a direction seaward?

A. A few minutes before twelve o'clock on Wednesday night.

Q. What did you see?

A. I saw the lights that I had in range over by the channel entering into Honolulu, change their position, or rather, we had changed our position with regard to the lights.

Q. We what?

A. I say we had changed our position in regard to

(Testimony of R. Nelson.)

the lights that I had selected as a range over in the channel which showed me that the "Helene" had gone more to sea and presumably the "Celtic Chief" was following as the line didn't part.

Q. Did you look at the "Celtic Chief" herself?

A. I looked at her, yes.

Q. What was her movement or motion?

A. Being right in line with the "Celtic Chief," it was pretty hard to see any movement in the same line.

Q. Any movement other than moving seaward?

A. No, I can't say that she made any other movement that I noticed. There was a moderate movement all the time, sluing a little bit. That is simply as the different swells came in she would move a little, not [2889—2058] very much, and that continued nearly all the time I observed.

Q. What kind of a motion was that?

A. It was more of a motion of the stern; more side to side; the bow would go the opposite way.

Q. What's that?

A. I say it seemed to me, from my opinion, that she was aground in the middle, near amidship, and that she was moving as if she was pivoted in the center, but it was a very slight movement, not a large movement that way.

Q. How long did this movement seaward continue before she slipped clear of the reef?

A. In the neighborhood of twenty minutes past twelve that she seemed to be free of the bottom; somewhere about that time.

Q. And what—describe that movement as to whether or not it was continuous.

A. About five or ten minutes to twelve when I no-

(Testimony of R. Nelson.)

ticed that we were changing our position in regard to lights, from that until about seventeen or eighteen past twelve she seemed to come very slowly, a little at a time; then a minute or so or two minutes, perhaps, before she came clear, why, she moved a little more rapidly and increased the rapid movement until she came clear altogether, but the first twenty or twenty-five minutes was very slow, apparently dragging over the bottom.

Q. And during that time did you observe the "Helene's" line to the "Celtic Chief"?

A. I observed part of it where it was in view near the search-light right up where it came over the quarter.

Q. Where?

A. Where it came over the quarter of the "Celtic Chief." [2890—2059]

Q. Any change in the position that you have already described?

A. I can't say that it was any different from what it had been right along.

Q. Did you observe the line of the "Likelike"?

A. I do not have any recollection of it at that time. I was busy with my own vessel and line at that time.
Recess.

Mr. WARREN.—Your Honor, I'd like to recall Mr. Faneuf for a few questions at this time. I'll state to the Court that Mr. Faneuf on going back to the ship noted a slight variance between the paper on file and the log itself which he wishes to have an opportunity to correct and, for that reason, has asked to be allowed to go back on the stand.

[Testimony of E. P. Faneuf, for Libelants
(Recalled).]

Mr. FANEUF resumes witness-stand.

Mr. WARREN.—Q. Will you kindly indicate, Mr. Faneuf, what the difference is? First, I'd like to ask you, you have now with you, the original log, official, original, engineer's log of the "Likelike" for December eight and nine? A. Yes, sir.

Q. 1909. Will you state what the correction is that you wish to make, Mr. ———

A. It's the record of the revolutions, steam pressure, and the volume per minute for the twenty-four minutes on December 8 that I did not record in making the copy. I copied off and read through and copied the same but not making the copy, knowing that the conditions were the same I, naturally, put down the same conditions of engines the next day because there was no change in the— [2891—2060]

Mr. OLSON.—It is not in evidence and he cannot testify about it yet.

Mr. WARREN.—Then I'll ask you, Mr. Faneuf, to please take this copy which you had this morning and make it correspond precisely with the log?

A. All right, sir.

(Witness makes correction.)

Mr. WARREN.—That covers what Mr. Faneuf asked to be permitted to make correct; then by consent of counsel I want to ask one or two questions.

Q. Mr. Faneuf, referring to the paper which the record will show we introduced, paper which was introduced subject to be ruled on which was marked for identification, Exhibit "M"—

Mr. OLSON.—I object to the document as not a

(Testimony of E. P. Faneuf.)

true copy and I object to it as it is not the original log.

I withdraw my agreement that this be allowed in evidence in place of the original log and object to the offer on the ground it is not the best evidence.

Mr. WARREN.—Now, your Honor, I'd like to make the offer of the original log of the "Likelike" produced by this witness, in place of the paper this morning offered.

Mr. OLSON.—I have no objection to that.

Mr. WARREN.—As though this log were offered this morning, your Honor.

The COURT.—Very well.

Mr. OLSON.—Now, then, I object to the log on the ground that it's hearsay; that it is a self-serving declaration; that it is incompetent, irrelevant, and immaterial; there is no foundation laid; and that it is not admissible in evidence as an official record.

Mr. WARREN.—Now, your Honor, I take it that is the same objection as was made this morning to the offer, your Honor reserving the ruling, and simply intended to be renewed.

Mr. WEAVER.—That same objection I entered into this morning and [2892—2061] I enter into at this time.

Mr. OLSON.—Furthermore, I object on the ground that the offer includes a volume of immaterial matter.

Mr. WARREN.—I intercept that objection by saying, so far as this log relates to the 8th and 9th of December, 1909. I have no objection, your Honor, to the clerk placing a strip of paper on here.

The COURT.—I'm satisfied and willing to say in

(Testimony of E. P. Faneuf.)

the record that this one for identification and not admitted in evidence may be admitted at this time.

Mr. WARREN.—I take it that's all subject to your Honor's ruling on that point?

Then it is understood that the paper offered this morning remains in evidence as an offer in place of the log itself?

The COURT.—Yes, but not yet received and only marked for identification.

Mr. WARREN.—Mr. Faneuf, this copy as you have now changed it, is now an exact copy?

Mr. OLSON.—I object to the question on the ground it is referring to a document not in evidence and, therefore, is incompetent, irrelevant, and immaterial.

The COURT.—It's subject to the same ruling.

Mr. WARREN.—Now, by consent of counsel I want to ask one or two other questions of this witness on another matter. That is, after the "Celtic Chief" was pulled off the reef, Mr. Faneuf, when the "Celtic Chief" came off, where were you?

A. When she came off she—

Q. Where were you?

A. We were at anchor then.

Q. I mean yourself personally, what part of the "Likelike"? A. In the cabin.

Q. And after the "Arcona" had towed the "Celtic Chief" out, what further operations, if any, did the "Likelike" take part in?

A. We hoisted anchors and then steamed astern of the "Celtic [2893—2062] Chief," which was in tow of the German man-of-war and when the German man-of-war dropped the tow then we put a line

(Testimony of E. P. Faneuf.)

aboard of her and towed her in the channel.

Q. Who was your captain at that time?

A. Captain Napala.

Q. Is he still in charge of the "Likelike"?

A. He is, sir.

Mr. WARREN.—That's all. Just one more question. Is Captain Napala in port to-day or in Honolulu? A. He is in Honolulu.

[Testimony of C. H. Strolhin, for Libelants.]

Direct examination of C. H. STROLHIN, a witness called on behalf of Libellants Inter-Island Steam Navigation Co. and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. What is your business, Mr. Strolhin?

A. Marine engineer, Inter-Island Steamship Co., steamer "Niihau" at present.

Q. How long have you been a marine engineer?

A. Last four or five years.

Q. And in December, 1909, on what vessel were you?

A. I was on the "Likelike" at that time.

Q. You were on her at the time of the operations connected with the "Celtic Chief," were you?

A. I was.

Q. And what was your watch Wednesday night, December 8?

A. My watch was from twelve to six that night and every other night.

Q. Twelve at night?

A. Twelve to six in the morning; twelve to six in the afternoon.

(Testimony of C. H. Strolhin.)

Q. Then you went on duty at twelve o'clock that night?

A. I went on duty at twelve o'clock. [2894—2063]

Q. At that time, do you know what rate of speed the "Likelike" engine was going?

A. "Likelike's" engines at that time were turning at full speed, as much as we could get her.

Q. Do you know how many revolutions of pressure?

A. Well, I can't remember just exactly now; I would have to refer to the log.

Q. Do you know what her engines' revolutions are at full speed?

A. There is a variance there; ordinarily running to about 130.

Q. What would be her revolutions if she were tied to a fixed object?

A. Tied up to the wharf would be anywheres from 90 to 1000.

Q. And what is the steam pressure of that engine?

A. It is allowed 150 by the Government.

Q. And do you know what the pressure was that night?

A. That pressure that night was about 149 or 150 pounds.

Q. Did you make any observations yourself?

A. Naturally going on watch, every engineer would do that; he would observe the engines.

Q. Do you remember now whether you did that or not? A. I did; that's a habit.

Q. Did you see the indicators, what they showed?

A. The revolutions; I did not take it at twelve

(Testimony of C. H. Strolhin.)

o'clock, but the chief took it at twelve o'clock and figured the revolutions and I took them when she stopped and figured them.

Q. When did she stop?

A. From ten to fifteen minutes after I came on watch.

Q. From the time you went on duty, from twelve o'clock midnight, how long did the engine continue to run at full speed without any change of the throttle?

A. There was no change in the engine to speak of until I received a bell from the captain on the bridge to stop her. She had started to speed up a bit, that was all.

Q. Describe that speeding up.

A. It was a kind of a slow process. [2895—2064]

Q. Go ahead.

A. When a ship is tied up like that she would naturally be turning slower than if she was running free, and when the ship started to come, why, of course, started to move through the water, the ship naturally at the same time would speed up. That was just a short while before the ship come off the reef when I received the bell to shut down, the ship was off, I presumed.

Q. All you know personally is that you got a bell?

A. I know that I received orders to stop her.

Mr. WARREN.—Cross-examine.

Cross-examination of C. H. STROLHIN.

Mr. OLSON.—Do you remember how many revolutions the engine was making at 12 o'clock?

A. At what?

(Testimony of C. H. Strolhin.)

Q. At 12 o'clock?

A. Well, I was just observing around there, of course, naturally I noticed she was turning up anywhere about 98, something like that; 99 revolutions, I've forgotten just exactly.

Q. That was at 12 o'clock? A. Yes.

Q. How soon was it before you noticed any change in the number of revolutions?

A. She began to speed up about fifteen or twenty minutes after I got on watch.

Q. Had it maintained 98 or 99 up to that time?

A. It had.

Q. Steadily? A. Steadily.

Q. You observed that?

A. I observed that myself.

Q. And about fifteen or twenty minutes after you came on watch, about fifteen or twenty after twelve, you noticed the revolutions began to increase in number per minute? A. Yes.

Q. About how much?

A. That I didn't have time to know. I had plenty of other things to do.

Q. How long after that did you get your order to shut off?

A. It was only a matter of a few minutes.

Q. About how much?

A. It wasn't over 5, maybe 3.

Q. So that anywhere from 5 to 10 minutes after you noticed that she began to speed up you got your order to stop the engine? A. Yes.

Mr. OLSON.—That's all.

Mr. WEAVER.—I have no questions.

Mr. WARREN.—That's all, thank you. [2896—

[Testimony of R. Nelson, for Libelants (Recalled).]

Captain R. NELSON resumes stand to continue direct.

Q. I want to ask you, Captain, if you have any knowledge of any signals for the Inter-Island boats in connection with the "Celtic Chief" operations?

A. I know we had an agreement that one red light hove in the rigging of the "Celtic Chief" was for us to go at reduced speed and when the two red lights were hove up, one additional light, we were to go full speed, as much as we could give her, as much power as possible.

Q. Were those—when those signals went up, when did the first red light go up?

A. I think those signals were used both on Tuesday and Wednesday night.

Q. What is that?

A. I think they were used on both nights.

Q. Wednesday night now?

A. Sometime early in the evening, I wouldn't say exactly; about eight or nine o'clock one red light was displayed in the rigging. In the neighborhood of eleven o'clock another light was added, asking tow, which meant for us to go full speed ahead at that time.

Q. Did you see the second one go up?

A. That I wouldn't be certain whether I *say* it or whether I *say* it afterwards and gave the order for full speed.

Q. Who gave that order?

A. I gave the order. I went up on the bridge, rang the telegraph full speed ahead.

(Testimony of R. Nelson.)

Q. Do you know whether or not that order was obeyed?

A. I think it was so far as I know; I have no reason to think it was not obeyed.

Mr. OLSON.—Move to strike as supposition and [2897—2066] conclusion of the witness.

Mr. WARREN.—What means of communication is there between the engine-room and the bridge?

A. When a signal is given from the bridge to the engine-room it is immediately answered by a telegraph by the engineer.

Q. How did you give the signal to go full speed?

A. I gave the signal by moving the hand of the telegraph from half speed to full speed and immediately—

Mr. OLSON.—Just one moment.

Mr. WARREN.—And what reply, if any did you get?

Mr. OLSON.—Just a moment. I object on the ground that it's hearsay.

The COURT.—I sustain the objection.

Q. How long have you been captain of the "Helene"? A. Since 1893.

Q. What is that? A. 1903, eight years.

Q. Pretty familiar with the boat?

A. Tolerably well, familiar, yes.

Q. Can you, on the bridge, determine whether or not a signal given by you in the engine-room is obeyed or not?

Mr. OLSON.—Object to the question on the ground it is immaterial.

Q. Otherwise than by the telegraph.

(Testimony of R. Nelson.)

Mr. OLSON.—Object to the question on the ground it is immaterial.

The COURT.—The objection is overruled.

A. Yes, when the vessel is free, moving free, you can always tell within a few seconds whether the signal has been obeyed right or wrong or exactly, by the movements of the vessel. When the vessel is [2898—2067] tied up, as she was in the present case, the only means in telling is by the difference in the vibrations of the vessel because of the increase of the revolutions of the propeller which is only noticeable to one who is familiar with the vessel.

Q. Do you know whether or not you when you gave this signal, full speed ahead at about eleven o'clock Wednesday night, the ship did or did not in fact change her speed?

A. I can say that the speed was increased. The speed of the engine was increased. I can't swear it was changed to full speed but I can say it was increased to such an extent that I noticed the difference in vibrations.

Q. Were there any other signals given after that?

A. Nothing, except to stop the vessel when the line was cut; that's the next signal.

Mr. WARREN.—Cross-examine.

Cross-examination of R. NELSON. on Behalf of Libellees.

Mr. OLSON.—Did you say that you operated one winch for the purpose of heaving in on the two anchor lines, the same winch?

A. The anchor-chains?

Q. Yes, the anchor-chains?

(Testimony of R. Nelson.)

A. One windlass heaves two anchor-chains, independent or together.

Q. You were using one windlass?

A. Windlass, windlass, it was not a winch.

Q. Well, donkey-engine then?

A. Windlass steam engine.

Q. You had an engine operating that windlass?

A. Yes.

Q. A donkey-engine? A. Steam engine.

Q. Not a donkey-engine?

A. Not a donkey-engine, a steam engine.

Q. Where is that engine?

A. In the fore-castle-head. [2899—2068]

Q. What kind of an engine? A. Steam engine.

Q. Do you know the horse-power of that engine?

A. I do not; no, sir.

Q. Did you see both anchors laid?

A. I knew that they were laid.

Q. Did you see them laid?

A. I didn't see them after they went under the surface of the water.

Q. Isn't that what you usually call seeing an anchor laid when its being put down in the water?

A. I saw it let go, if that is what you refer to.

Q. Did you see them both let go?

A. Yes, I saw them both let go.

Q. Was the "Helene" in the same spot when both were let go or in one spot when one was let?

A. In different spots.

Q. What did she do, steamed ahead after she laid her starboard anchor and drop her port anchor?

A. Steamed ahead a certain distance on the star-

(Testimony of R. Nelson.)

board chain and then dropped the port anchor and then backed up to her position.

Q. Were you up in the fore-castle-head at any time?

A. Not during the letting go of the anchor or moving the vessel.

Q. Did you see the steam engine being operated at any time for the purpose of operating the windlass? A. I did, yes.

Q. Did you personally see that?

A. I did. I could see that from the bridge.

Q. When did you see that done?

A. After we were in place heaving taut.

Q. How many times did you see that done?

[2900—2069]

A. I can't state.

Q. Did you see it done more than once?

A. I did, yes, sir.

Q. Could you see both the windlass and the engine?

A. I cannot see the whole windlass; it's up on deck.

Q. Who is the man that was running the engine?

A. The winch-man, donkey-man we call him.

Q. Who is that man?

A. He's a Japanee or native, whoever it happens to be at the time; one of the crew.

Q. Who was it at the time? A. I don't know.

Q. Have you no idea? A. No idea, no, sir.

Q. Have you any idea how many times you saw that windlass busy in that way heaving on the anchor-chains?

(Testimony of R. Nelson.)

A. Three or four times; I don't remember myself. Whenever I thought it needed to be hove in.

Q. Did you see that done at any time about dark on Wednesday?

A. Couldn't see it done after dark.

Q. So that from darkness on Wednesday, until the "Celtic Chief" came off, you did not see that windlass used in any way for the purpose of heaving in on the anchor-chain because it was too dark?

A. I couldn't see it personally; I could hear it.

Q. How do you know that it was the windlass that was being used?

A. Because the windlass has a sound particularly its own.

Q. Has it a different sound letting it down?

A. Yes, sir, it has.

Q. Are you willing to swear that *there* was so that you were able to determine by hearing how many times it was done?

A. I can swear to two times. [2901—2070]

Q. How many times after darkness?

A. I only say once or twice, a few times.

Q. Dozen? A. Not as much as a dozen.

Q. As many times as six?

A. I wouldn't swear, whether two, three, or four.

Q. Did they do it the early part of the evening?

A. You are referring to Wednesday evening?

Q. Wednesday evening?

A. They might have done it in the early part.

Q. Don't you know? A. I don't recollect.

Q. You've said that they did several times in the course of the evening? A. So I have.

(Testimony of R. Nelson.)

Q. Did they in the early part?

A. They may have done so.

Q. Don't you know?

A. I don't recollect any particular minute.

Q. Now, then, isn't it possible that you heard this on Tuesday night, and not Wednesday?

A. I heard it both times.

Q. Are you sure? A. Sure.

Q. Yet you are not able to say now whether or not you hear it in the early part of Wednesday?

A. It might have been.

Q. You don't know? A. I don't know.

Q. You are absolutely positive you heard that windlass heaving in on the anchor-chain both on Tuesday night and Wednesday night?

A. Yes, sir.

Q. You saw it busy on Wednesday?

A. During the daytime, yes.

Q. Several times? A. Several times.

Q. How do you account for the fact that they were able to use this windlass several times on [2902 — 2971] Wednesday night, several times on Wednesday, several times on Tuesday night?

A. I didn't say how many times; several is more than once.

Q. Did they use it several times on Wednesday night? A. They did.

Q. You state it might have been as much as six?

A. I don't say it was any more than six.

Q. Didn't you say it might be as much as six?

A. Several times.

Q. As much as six? A. It might be less.

(Testimony of R. Nelson.)

Q. Are you still prepared to say that it was as many times as six on Wednesday night?

A. It might have been.

Q. Now, about how many times on Wednesday, do you think, in the day?

A. I have no definite recollection. Whenever I thought it was necessary I had the chain hove taut.

Q. Now, you say it used didn't you? A. I did.

Q. Did you see it used more than once for that purpose on Wednesday?

A. I think very likely I did; yes.

Q. More than twice?

A. Well, might be and might not. Twice is several.

Q. Do you know it was used at all on Wednesday?

A. I do.

Q. You are positive? A. Positive.

Q. You know it was used once, but you don't know it was used more than once.

Mr. WARREN.—I object to that as asked and answered.

The COURT.—Objection overruled.

A. It might have been twice, yes, and might have been more. [2903—2072]

Q. Do you know whether or not it was used more than once on Wednesday in the daytime for the purpose of heaving in on those anchor-chains?

Mr. WARREN.—Object to the question; asked and answered.

A. My impression is that it was.

The COURT.—I overrule the objection.

Q. Now, then, on Tuesday, you heard it used on

(Testimony of R. Nelson.)

Tuesday night, did you? A. I did, yes, sir.

Q. About how many times?

A. I don't know how many times. I don't recollect.

Q. More than once?

A. I didn't keep any recollection of times.

Q. If you heard it at all on Tuesday night, as you have testified, you must be able to say you heard it once at least? A. Yes.

Q. Now, then, do you know whether you heard it more than once?

A. I wouldn't say how many times I heard it.

Q. I'm asking you to do so?

A. I can't say that for certain.

Q. The most that you are willing to swear to is that you heard it once on Tuesday night, you saw it once on Wednesday and once on Wednesday night. Now, are you prepared to say that it was used for the purpose of heaving on the anchor-chain six times.

A. I can't swear to that many.

Q. Can you swear to six?

A. I wouldn't want to swear to that.

Q. All you are prepared to swear positively now is that it was heaving in on Wednesday night?

A. Yes.

Q. You can't say more than once? A. I can't.

[2904—2073]

Q. How does it happen that you were able to remember so clearly that it was hove in on Wednesday night and yet you are not able to remember whether it was more than once?

A. That's just my general recollection.

(Testimony of R. Nelson.)

Q. You might be mistaken?

A. Possibly, yes. No one is perfect especially after two years.

Q. Did you hear those anchor-chains hove in Wednesday night after eleven o'clock?

Mr. WARREN.—I think the question is asked and answered, your Honor.

The COURT.—Objection overruled.

Q. Answer the question.

A. I'm not prepared to state any particular hour when the chain was hove in.

Q. So that, after the "Celtic Chief" began to move seaward you don't know whether or not your anchor-chains were hove in? A. I do, yes.

Q. You said eleven o'clock the "Celtic Chief" didn't seem to move? A. I did not.

Q. Didn't I ask you after eleven o'clock.

A. You said at eleven o'clock as I understood the question.

Q. Did you hear the windlass used for the purpose of heaving in on the "Helene's" anchor-chains after eleven o'clock on Wednesday night?

A. I did, yes.

Q. More than once?

A. It was sort of a continuous operation after about ten minutes, five or ten minutes before twelve.

Q. So that now we have accounted for that one time on Wednesday night. Now, then, kindly refresh your memory and state whether or not it was used before eleven o'clock on Wednesday night?
[2905—2074]

Mr. WARREN.—I object to that and ask that the

(Testimony of R. Nelson.)

voluntary statement of counsel be stricken from the record.

Mr. OLSON.—I withdraw the question. Now, Captain, are you prepared to swear that you heard that more than once on Wednesday night, the windlass heaving in on your anchor-chains?

A. It might have been more than once.

Q. Are you prepared to state that you now remember more than once?

A. I don't limit myself to any number.

Q. Kindly answer my question.

Mr. WARREN.—I submit the question is asked and answered, your Honor.

The COURT.—Objection overruled; he has not. Now answer it.

A. What is the question? (Question read.)

A. I don't remember the time, any particular time. My impression is that it was used once or twice or several times.

Q. That's your present recollection?

A. That is my recollection.

Q. Now, then, how many times was it used after eleven o'clock?

A. After eleven o'clock the windlass was used as fast as we could get in the chain. It was a continuous occasion.

Q. What did you call that?

A. It was a continuous occasion.

Q. That was once? A. Yes.

Q. Now, then, do you remember now that those anchor-chains were hove in by means of that windlass before eleven o'clock.

(Testimony of R. Nelson.)

A. Not the exact time, no, I don't. [2906—2075]

Q. You don't remember of any before eleven o'clock? A. No, not the exact time; no.

Q. I want to know what you mean. Do you mean that you are unable to say whether or not those anchor-chains were hove in at all by means of the windlass before eleven o'clock?

A. My impression is that they were.

Q. About how long before eleven o'clock?

A. There you are. I don't know what time.

Q. You say that your impression was that they were hove in before. How many times does your impression cover? A. We'll say at least once.

Q. You remember that distinctly?

A. I didn't say so. I said my impression was.

Q. Was that in the early part of the evening or in the late part of Wednesday night?

A. I don't know what time it was; I couldn't fix any particular time.

Q. As far as you know the "Celtic Chief" didn't move, did it, until after eleven o'clock?

A. So far as I know it didn't move until about ten minutes before twelve. That's the first, between five and ten minutes, I don't know exactly the time. That's the first indication that I had of any movement of the vessel.

Q. About how much anchor-chain did they heave in each time on Wednesday?

A. Not more than one or two links at a time.

Q. What is the length of a link?

A. About eight inches.

Q. You can only remember once on Wednesday?

(Testimony of R. Nelson.)

A. I can only testify positively that Wednesday evening [2907—2076] when the vessel began to move.

Q. Then, as a matter of fact, you don't know, in so far as time is concerned, if the windlass was used at any particular time prior to eleven o'clock?

Mr. WARREN.—Object to the question as nonsensical, in the first place, and asked and answered in the preceding questions.

Q. Then, Captain, except for this one time, this **continuous** heaving in on the anchor-chain after the "Celtic Chief" began to move on Wednesday night, you are not now able to fix any definite time when the windlass was used for the purpose of heaving in on the "Helene's" anchor-chains?

A. I am, one particular time, yes.

Q. Now, when was that one particular time?

A. That was on Wednesday.

Q. At what time?

A. Nearly twelve o'clock at noon when we stopped the engine.

Q. Now, then, is there any other time, except that one and the continuous movement after the "Celtic Chief" began to move?

A. No other particular time that I can state. At that time I ordered it hove taut and I know it was done so.

Q. How many links were taken in that time?

A. I didn't count them.

Q. What's your present judgment?

A. Several links.

Q. By several do you mean as many as four or five?

(Testimony of R. Nelson.)

A. Hardly as much as that. I should think two or three links.

Q. That would be, eight inches to the link, about a foot and a half or two feet of chain?

A. Something like that. [2908—2077]

Q. I see. Now, then, you don't know, then, definitely whether there was any taken in on Tuesday night? A. I don't know anything about it.

Q. Do you know whether any was taken in Tuesday? A. My impression is that it was.

Q. It is only an impression?

A. That's all.

Q. And the same is true of Wednesday prior to 11 o'clock? You were unable, by means of your anchor-chains, to get your twelve-inch hawser clear of the water, weren't you?

A. Yes, the line was—by means of the chain the line never taken out of the water.

Q. As a matter of fact, throughout the whole operations your twelve-inch hawser lay in a bight.

A. A part of the line was in the water.

Q. And if Captain Macaulay has testified that practically at all times the "Mikahala"—

A. You are referring to the "Helene"?

Q. I mean the "Helene." While the "Helene" was going full speed ahead, the lines were clear of the water except when the swells would come underneath, he would be incorrect, in that testimony?

A. According to my recollection, yes.

Q. If Captain Tullock says the "Helene's" lines at one time were straight out of the water as a fiddle-string, he was wrong? A. I should think he was.

(Testimony of R. Nelson.)

Q. As a matter of fact, it is impossible for the "Helene" by heaving in on her anchor-chains or in any other way to keep that line straight out of the water without breaking it? A. I think so.

Q. You are not sure? A. Sure.

Q. That is your judgment? A. That is my judgment. She might jump and do it. [2909—2078]

Q. That's the only way you could get it straight out of the water? A. That's the only way.

Q. How long was that line? What was the distance between the stern of the "Helene" and the stern of the "Celtic Chief," approximately; as near as you can now judge?

A. Somewheres about six hundred feet, I should judge. I don't know exactly.

Q. How long do you think the lines of the "Arcona" were?

A. I don't know anything about the lines of the "Arcona."

Q. Have you no idea?

A. I might have an idea. I don't know enough to testify. I'm here under oath. I won't testify about the "Arcona's" lines under oath.

Q. You didn't observe where the "Arcona's" lines were located with reference to the "Helene"?

A. I did; yes.

Q. Judging from that, what would be the distance?

A. Very close to the same distance; only a few feet of the distance of the "Helene"; within twenty or thirty feet.

Q. Was the "Helene" pulling as far to seaward as the "Arcona" was lying?

(Testimony of R. Nelson.)

A. They were approximately side by side with only a few feet difference.

Q. What about the "Mikahala" then?

A. I don't know anything about the "Mikahala."

Q. You didn't see her? A. I saw her, yes.

Q. Judging from what you saw?

A. Judging from what I saw I should say that she was perhaps a little less than the "Arcona."

Q. About how much less?

A. That I couldn't say, how much less.

Q. Couldn't you tell with reference to a ship's length the length of the "Mikahala"?

A. I might give a guess [2910—2079] at it.

Q. You remember what the situation out there was at the time? A. It's pretty clear in my mind.

Q. Now, making a guess at the length of the "Arcona," how much of the "Mikahala" was visible from the "Helene's" stern?

A. I think from the stern of the "Helene," probably you could see the whole of the "Mikahala."

Q. So that you think, do you not, that the "Mikahala" was her whole length nearer to the "Celtic Chief" than the "Arcona"? Do you not?

A. I should say that is about as I recollect it.

Q. And that notwithstanding the fact that the "Arcona's" wires were running almost straight down from her stern into the water and also practically straight down from the "Celtic Chief" into the water, at that time? A. Yes, sir:

Q. You came out on Tuesday morning and took the "Mauna Kea's" place, didn't you?

A. Yes, sir.

(Testimony of R. Nelson.)

Q. Was the "Likelike" there then?

A. No, sir.

Q. When did the "Likelike" arrive?

A. If I remember right, about eleven o'clock Wednesday morning.

Q. Eleven o'clock? About the same time that the "Arcona" put in its appearance?

A. I think a little later.

Q. A little later than the "Arcona"?

A. I think so. I am not certain.

Q. You saw the "Intrepid" on Tuesday, did you not, and [2911—2080] Wednesday morning?

A. I did, yes.

Q. Did you observe whether or not this line was straight out of the water, and was lying on the surface of the water?

Mr. WARREN.—I object to it as not proper cross-examination.

Mr. OLSON.—I'm willing to make him my witness on this point.

Mr. WARREN.—Very well, I'll cross-examine him.

Mr. OLSEN.—Very well.

(Question read.)

Mr. OLSEN.—That's at any time, Captain.

A. I can't recollect enough to make an answer on any time. It might have been laying in the water, or it might have been very nearly straight. It was impossible to be exactly straight because a vessel can't pull her line but what there is some sag to it.

Mr. WARREN.—Ask to have the answer stricken as not responsible, your Honor.

(Testimony of R. Nelson.)

The COURT.—I think it's responsive; objection overruled.

Mr. WARREN.—Motion denied, your Honor?

The COURT.—Yes.

Mr. OLSON.—You spoke of moderate swells coming in from the south southeast which struck your vessel on the port bow and the "Celtic Chief" on her starboard quarter. About how much on her starboard quarter was that striking the "Celtic Chief"?

A. I wouldn't say exactly to a point.

Q. Well, as near as you can now judge?

A. You want an answer in the point of the compass or what? [2912—2081]

Q. Any way that you choose to answer so long as you confine yourself to the truth and answer the question. A. Please read the question again.

(Question read.)

A. If the "Celtic Chief" was heading north by west, and the swells came in south southeast, the swell would naturally hit her one point on the starboard quarter.

Q. About eleven degrees?

A. About that, yes, providing that the swell came from the south southeast. That is only my impression.

Q. That's your present recollection?

A. That is the nearest I can recollect at the present time.

Q. So it was striking her fairly astern, wasn't it?

A. Well, one point on the stern.

Q. Yes. Where was it you observed the average height of the swells as being eight or ten feet?

A. I observed them rolling past the "Helene."

(Testimony of R. Nelson.)

And between the "Helene" and alongside of the "Celtic Chief."

Q. And the highest that you observed in your judgment would be from ten to twelve feet?

A. I should think about that; yes.

Q. Now, as compared with Wednesday, how was the swell on Tuesday running, higher or more moderate?

A. I don't think I'd be prepared to say about that. I should say it was practically the same, I don't say there was very much difference.

Q. Don't you know, as a matter of fact, the swell was running higher on Tuesday, a little bit, possibly not very much, and gradually diminished?

A. I don't remember it as a matter of fact, but it may have been.

Q. Now, Captain, I'll ask you how often these swells [2913—2082] would come in.

A. The highest swells?

Q. No, the ordinary swells.

A. The ordinary swell was coming in all the time, it wasn't all smooth; swells coming in one after the other, various heights.

Q. There'd be two or three big ones, wouldn't there, that would come along and between them there'd be periods of small ones?

A. That's the way it usually happens.

Q. Wasn't that the way it came in those days?

A. I think it was, as near as I can recollect.

Q. You take the big ones. They'd come in—

A. My experience has been that the three swells come one after the other.

Q. How large would the swells in between those

(Testimony of R. Nelson.)

larger ones be, about how many feet?

A. They would be of different sizes.

Q. They'd be considerably smaller than the biggest?

A. Considerably smaller than the biggest.

Q. Two or three feet, possibly three or four feet?

A. All different sizes. I couldn't state the size in any particular number of feet.

Q. Isn't it a fact that two or three big ones would come in and then small ones would come in for a considerable period of time?

A. I think that pretty near describes it.

Q. About how long a time would it be—five or ten minutes, fifteen or twenty minutes?

A. No, not fifteen or twenty minutes; it might be five minutes on an average.

Q. So if it might possibly average five minutes between [2914—2083] the big swell, as a matter of fact, Captain, it would be a comparatively simple thing, wouldn't it, discharging cargo in the shore boats for those having the appliances by which the cargo is lowered into the boat to watch and let it down into the boat only between swells?

A. Not comparatively, easy.

Q. Not comparatively easy, but it was done?

A. Not comparatively easy, but it was done; yes.

Q. Successfully? A. It was, yes.

Q. And throughout all the operation, there was not a single boat that was capsized?

A. Not to my knowledge.

Q. And there was not a single man that was even knocked over, as far as you know?

(Testimony of R. Nelson.)

A. I have no knowledge of any one being knocked overboard.

Q. About how many bags did each sling?

A. I think about five, possibly, or six; four or five.

Q. As many as that?

A. I think so. I know at one time that they had difficulty with the engine aboard there that they were hoisting small loads.

Q. Don't you know they were taking two or three at a time? A. They might have been.

Q. Did you see the "Arcona" part her line on Wednesday shortly after noon?

A. I saw her part one line.

Q. Know whether that was a manila hawser or wire line?

A. The line that I saw broken was a wire.

Q. About how long do you think that was after the "Arcona" got into position and started her [2915—2084] propellers going?

A. The only time that I saw the wire broken was once; that was in the neighborhood of half-past two and three o'clock.

Q. She had gotten into position about what time?

A. About that same time.

Q. How long had she been using her propellers pulling before the line parted?

A. Not more than five minutes.

Q. Would you think it was five minutes?

A. Might have been less, might have been a minute. She just started right ahead and it was within a few minutes.

Q. If it had been half a minute, you would have

(Testimony of R. Nelson.)

remembered it as distinguished from a period of several minutes?

A. If you say from the minute she started her propellers it takes some time to get her propellers started.

Q. It wasn't a sudden jump, was it?

A. It wasn't a sudden jump; no. It may have been less than five minutes. That's as near as I can say.

Q. And that's your best judgment now, is it?

A. Yes.

Q. Did you hear the instructions or rather the orders that were given from the "Celtic Chief" to the "Intrepid" to get out of the road?

Mr. WARREN.—I object to that as not proper cross-examination.

Mr. OLSON.—Well, I withdraw the question. You made a stop on Wednesday afternoon as I understand it.

A. Yes, sir.

Q. And what did you do while your engines were stopped? A. You mean me personally?

Q. Yes.

A. I went aboard the "Celtic Chief" to find out what was [2916—2085] the trouble with the tow-line.

Q. And did you find out there was something the matter? A. I did, yes.

Q. And what was done?

A. The line was fixed properly.

Q. And then what did you do?

A. Started ahead again.

Q. Did you go back to the "Helene"? Did you

(Testimony of R. Nelson.)

personally go back to the "Helene"?

A. Yes, I went back to the "Helene."

Q. Did you give the order that she go ahead then after you got back?

A. No, I think not. I think it was started out before I got there. I had made arrangements with the mate when I signaled to him to go ahead.

Q. Did you go right back as soon as things were in shape? A. Yes, sir.

Q. So it wouldn't be a matter of more than a few minutes? A. No.

Q. Did you go on the "Celtic Chief" after that, at all?

A. Not after that; on Wednesday afternoon.

Q. About what time was it that you left the "Celtic Chief"? A. Around four o'clock.

Q. Didn't you testify on direct that your last stop on Wednesday was between two and three o'clock?

A. Yes, I think it was.

Q. How long did it take you to get things fixed up?

A. About an hour and a half.

Q. And the "Helene" wasn't doing anything during that hour and a half? [2917—2086]

A. Not anything with the engine. The line was kept taut with the chain.

Q. What was kept taut?

A. The line was kept taut with the anchor-chain. That's one of the times when the windlass was working.

Q. What was the matter with the line?

A. The line was getting chafed aboard the "Celtic Chief."

Q. How were you able to fix that?

(Testimony of R. Nelson.)

A. We took a wire pennant, put it on the twelve-inch line, took it aboard the "Celtic Chief," put another pennant around the mizzenmast with shackles in it, left the manila hawsers to chafe as much as it pleased; the wire took the chafe.

Q. Was the manila hawser from the "Celtic Chief" so that the strain was to be—

A. The wire was shackled on. I put the shackle around the twelve-inch line and let it run up against the edge of the twelve-inch line.

Q. The hawser was first pulled on board of the "Celtic Chief"?

A. The twelve-inch line wasn't; no.

Q. What was?

A. It was not the line. We only put a long line floating to the "Celtic Chief."

Q. Did the rope slack up any when you made these pennants fast?

A. It moved, slacked a little, not very much.

Q. Now, you think the search-light of the "Arcona" was plain from dusk, or from darkness, when darkness first fell on Wednesday night, until the "Celtic Chief" came off? Practically all the time?

A. I'm not certain.

Q. You *don't think* that search-light was not put on until [2918—2087] ten or eleven o'clock.

A. I haven't any definite recollection of any particular time. My impression was that it was most of the evening.

Q. You couldn't say, then, as a matter of fact, that that search-light was not on until ten or eleven o'clock. You couldn't say what the condition of the lines were.

(Testimony of R. Nelson.)

A. I could tell what the conditions of the lines were because the light from the quarter-deck shining down.

Q. You could tell? A. Yes.

Q. What light was that?

A. Those are the steamer lights.

Q. This line hung pretty directly in the water?

A. Not up and down. It hung at a small angle, say forty-five degrees, for the sake of argument.

Q. Do you know how high the stern of the "Arcona" was out of the water?

A. No, I don't know, for a fact.

Q. Well, how much according to your judgment?

A. To give a guess at it any where from fifteen to twenty feet.

Q. Well, then, that line must have been, if it was only twenty feet out of the water, it must have been hanging almost directly down in the water?

A. That is the way I recollect it. It was at a small angle out from the vessel's stern.

Q. If the stern was fifteen or twenty feet it must have been more than twenty feet from the place on the stern where it went into the water? [2919—2088]

A. Possibly it was.

Q. Why did you say twenty feet on direct without making that statement that you were not positive?

A. It wasn't—I never made statements by saying it was, only my impression. I don't testify to any exact distance in any of this testimony.

Q. Then it might have been forty feet?

A. It might have been.

Q. It might have been more than forty feet?

A. I don't know how much it was. It's my im-

(Testimony of R. Nelson.)

pression it was about twenty or thirty feet.

Q. Well, you know now that it must have been considerably more than forty feet, if the deck of the "Arcona" was fifteen or twenty feet out of the water and that line hung out of the water at an angle of forty-five degrees? A. Probably it was; yes.

Q. Now, when the "Celtic Chief" came within this distance of twenty or thirty feet of the "Arcona" as you observed, do you mean to say that if the "Arcona" hadn't started to steam away, the "Celtic Chief" would have run into her?

A. I think she might have.

Q. Well, do you think she would have?

A. I can't swear that she would because she might have been so far to the starboard side, owing to the pull of the "Mikahala" that she might have gone clear. My impression at the time was that she came very near having a collision.

Q. And might that have been a hundred feet?

A. At that time.

Q. A hundred or two hundred feet?

A. At that time I was considerably further away.

Q. How much further out?

A. The distance of our line. [2920—2089]

Q. You mean to tell the Court, do you, that you were out four or five hundred feet there?

A. I think we were, yes.

Q. And yet, standing four or five hundred feet ahead of the "Arcona" with the "Celtic Chief" over to the farthest side of the "Arcona," you were able to tell that she came within twenty or thirty feet of the "Arcona"?

(Testimony of R. Nelson.)

Mr. WARREN.—I object to the question as not a fair question and not a proper statement of the evidence.

Mr. OLSON.—Withdraw the question. Weren't you four or five hundred feet ahead of the "Arcona"?

A. No.

Q. You were not? A. Not ahead of it, no.

Q. Where were you? A. One side.

Q. Weren't you pulling straight ahead when the "Celtic Chief" came off in the direction that you were pointing? A. Yes, sir.

Q. And you were not more than a hundred and fifty feet away? A. Yes, sir.

Q. And you went straight ahead as the "Celtic Chief" came off? A. Not straight ahead.

Q. You went in the direction that you were pointing?

A. Part of the time, and then part of the time we went over to the starboard on account of the pull of the starboard anchor-chain.

Q. How long was that after the "Celtic Chief" started to move?

A. We took in the chain as fast as she moved, took in all the slack of the chain as she came along. [2921—2090]

Q. Your chain?

A. Our anchor-chains, both of them.

Q. That kept you going on the run?

A. In the direction of the anchors, yes.

Q. Now, you went between those two anchors?

A. Practically so, yes.

Q. How much to starboard of the "Helene" was

(Testimony of R. Nelson.)

the starboard anchor laid?

A. Oh, it might have been a point or two points off the starboard bow.

Q. About fifteen or eighteen degrees?

A. Possibly.

Q. And how far to port was the port anchor?

A. About. When we were tied up, tied and pulling,—about equal.

Q. And did you heave in on both the anchor-chains when the “Celtic Chief” began to come? A. Yes.

Q. And you had from sixty to ninety fathoms out?

A. Sixty fathoms on the port chain, ninety on the starboard.

Q. That would be over five hundred feet of chain on the one, and over three hundred and fifty on the other? A. Yes.

Q. And you hove on these anchor chains?

A. Until I got the anchor up, then the pull of the starboard chain pull her off to starboard.

Q. Then you had gone ahead at least three hundred and fifty feet before you veered to starboard?

A. We had.

Q. And you had about six hundred feet more to get to the other anchor? A. Yes. [2922—2091]

Q. You were about five hundred feet ahead of the position that you were originally in when you came alongside of your furthest anchor?

A. You might say that, but we were not ahead of the “Arcona.”

Q. Weren't you ahead of the “Arcona”?

A. In a general direction ahead, but not ahead as you seem to want to make out, directly ahead.

(Testimony of R. Nelson.)

Q. I'll ask you if you weren't four or five hundred feet ahead of the "Arcona" on the side that you were on? A. You *might it* that way.

Q. Do you still insist that in the position that you were, you were able to tell that the "Celtic Chief" came within twenty or thirty feet of the "Arcona"?

A. I said, my impression was that she did.

Q. Is that a guess or judgment?

A. My best judgment.

Q. Where were you, on the bridge?

A. On the bridge.

Q. Where were you on the bridge at the time that the "Celtic Chief" was coming off, and the "Helene" was moving forward between her anchors?

A. I was on the port corner of the bridge forward somewhat.

Q. That would be ahead of the beam?

A. Probably.

Q. What's the length of the "Helene"?

A. One hundred and seventy.

Q. You were about eighty or eighty-five feet forward of the stern of the "Helene," weren't you?

A. I think I was, yes.

Q. And from that position—I withdraw that. Where was your port anchor with reference to the line, the length of the "Arcona"? [2923—2092]

A. I should say the port anchor was quite a little ahead of the line of the bow of the "Arcona."

Q. And in direct line of the "Arcona," or was it to the starboard of that line?

A. It was a little to starboard.

Q. About how many feet would you think?

(Testimony of R. Nelson.)

A. That I couldn't say.

Q. Have you no idea?

A. I couldn't say; no.

Q. You stated that you were one hundred or one hundred and fifty feet off the "Arcona"?

A. That's when we were lying side by side.

Q. And your port anchor was lying about one or two points to port? A. Yes.

Q. And you had about three hundred and sixty feet of chain out?

A. Three hundred and sixty feet of chain.

Q. Wouldn't that bring that from fifty to seventy-five feet, at least, to the port of the line of your vessel. A. I think it would.

Q. Then it would bring within twenty-five feet or so of the line of the "Arcona"; if she had gone on ahead she would have come within twenty-five feet of your line? A. Possibly, she might.

Q. Now, what was the distance between your port anchor and your starboard anchor—I mean across, the distance between them?

A. You could figure that out by the angle.

Q. You figure it out?

A. I can't figure it out without paper and pencil; it might be an angle of a hundred feet.

Q. A hundred feet? [2924—2093]

A. A couple of hundred.

Q. Then when you hoisted ahead you went between, you went to port of your starboard anchor, didn't you? You went, you came alongside of her?

A. Yes.

Q. Then you couldn't have veered much over fifty

(Testimony of R. Nelson.)

or seventy-five feet of starboard in your course out?

A. Which anchor, starboard?

Q. Yes. You couldn't have veered your course more than fifty or seventy-five feet?

A. Make it a hundred.

Q. Then you had gone a hundred feet to starboard and you had traveled about five hundred and fifty feet seaward before you came to that anchor, hadn't you? A. About that.

Q. Now, the "Celtic Chief" before she started to come off the reef was about six hundred feet from the "Arcona," wasn't she?

A. From the "Helene," yes; I don't know about the "Arcona."

Q. The same about, from the "Arcona"?

A. Practically the same.

Q. Well, then, by the time you had reached that starboard anchor while you were still to port of that anchor, the "Celtic Chief" had not yet come as near as twenty or thirty feet of the "Arcona," had it? Couldn't have? A. Possibly not.

Q. It couldn't *it*, could it?

A. Not according to your figures, it couldn't; no.

Q. Aren't those figures correct?

A. I guess they are. Things moved pretty lively about that time.

Q. Then, as a matter of fact, you hadn't veered your position to starboard over a hundred feet, have you, at the time that you think that the "Celtic Chief" had [2925—2094] come within twenty or thirty feet of the "Arcona"?

A. I don't think we were much more than that.

Q. You don't think you were no more than that?

(Testimony of R. Nelson.)

A. I don't think so.

Q. Yet, you think you could tell that the "Arcona" came within twenty or thirty feet of the "Arcona" in that position?

A. That's what I judge at the time.

Q. That is, though the "Celtic Chief" was on the other side?

A. You remember it was midnight then, and you couldn't see very closely?

Q. Could you see at all?

A. Certainly I could.

Q. From what?

A. From the lights of the "Arcona."

Q. You were able to determine those twenty or thirty feet by the gap closing?

A. Couldn't do that; we were in line.

Q. How could you tell?

A. From my judgment.

Q. How could you form a judgment?

A. I have calculated to form that judgment.

Q. You have not given the exact distance?

A. No, sir, I didn't have any measure.

Q. How did you go about arriving at that judgment?

A. Because I saw the "Celtic Chief" come so close to the "Arcont" that I thought there was going to be a collision.

Q. Then the fact is, isn't it, that the "Celtic Chief" was on the other side of the "Arcona" when you saw that? Isn't it true?

Mr. WARREN.—I submit, your Honor, that is an incorrect statement of the evidence. [2926—2095]

(Testimony of R. Nelson.)

Mr. OLSON.—Answer the question.

A. Give the question again, please.

(Question read.)

A. I'll say she wasn't very far.

Q. How, then, if she was not, in your judgment, on the other side of the "Arcona," could you tell at all, could you form any judgment, if the stern of the "Arcona" was between you and the "Celtic Chief"? Answer that.

A. Because I could see the two vessels approaching and expected every minute, in my mind, that the "Celtic Chief" would run on top of the other one.

Monday, October 23, 1911.

Mr. WARREN.—I understand that Captain Tullet has not been finished as to cross-examination by Judge Weaver. They are both here. I guess, possibly, we'd better have Captain Tullet finish.

(Captain Tullet resumes stand.)

**[Testimony of Albert Tullet, for Libelants
(Continued).]**

Judge WEAVER.—Captain Tullet, on the night of Wednesday, at half-past eleven, what speed were you making, was the engine making?

A. Full speed.

Q. And how long did that continue?

A. Continued till twenty minutes past twelve.

Q. Did you give any orders with regard to the anchor before that? A. Yes.

Q. What did you do? A. Hove it up.

Q. Why did you do that?

A. To be in position to tow the "Celtic Chief."

Q. Why did you give those orders to be in posi-

(Testimony of R. Nelson.)

tion to tow the "Celtic Chief" at that time? [2927—2096]

(Captain Nelson resumes the stand.)

[Testimony of R. Nelson, for Libelants
(Continued).]

Mr. OLSON.—Captain Nelson, when the "Celtic Chief" came off the reef, the "Helene" steamed ahead, did she not? A. Not immediately.

Q. She didn't? A. Not immediately, no.

Q. Was she pulling when the "Celtic Chief" came off? A. She was, yes.

Q. What prevented her from going ahead?

A. She went ahead. You said, "steamed ahead." We went ahead, heaving in on the anchor-chain.

Q. You were not using your propellers?

A. Not when the vessel came off clear. We stopped the engine.

Q. And you began to heave in on your anchor-chain? A. When she came off, yes.

Q. Now, by the time that the "Helene," I think you testified the last time you were on the stand, by the time that the "Helene" had come alongside of her starboard anchor, the "Celtic Chief" had come within twenty feet of the "Arcona"; is that correct?

A. Twenty or thirty feet, I said, according to my judgment.

Q. And it was while you were alongside of the starboard anchor that you noticed this; is that correct? A. I think I testified in that manner.

Q. Yes. Well, your two anchors were not more than two hundred feet apart, were they?

A. I couldn't say that definitely. I don't think

(Testimony of R. Nelson.)

they were a great deal more than that.

Q. Approximately, two hundred feet apart?

A. I should say a little more, rather than less.

Q. Well, how much more? Fifty feet more?

[2928—2097]

A. Between two and three hundred feet, I should say; something like that.

Q. And your starboard anchor was about five hundred and fifty feet forward of the bow of the "Helene," was it not?

A. Ninety fathoms, five hundred and forty feet.

Q. Five hundred and forty feet?

A. About that, yes.

Q. Five hundred and forty feet. Now, the "Arcona" did not change its position to eastward or westward, that is, to port or starboard, did it, when the "Celtic Chief" came off? Its only motion was its forward motion when it began to steam on?

A. That's as far as I recollect.

Q. Now, you know, do you not, Captain, that there is considerable superstructure on the deck of the "Arcona"?

A. Towards the midship part of it, yes.

Q. And when you say towards midships, you don't mean it was like a mast, but there was a considerable superstructure, without giving any dimension, in the middle of the "Arcona"?

A. As I remember it, the quarterdeck was lower down than the middle part of it. The midship was built up like most men-of-war.

Q. But the stern of the "Arcona," I think you testified, was about fifteen feet out of the water?

(Testimony of R. Nelson.)

A. I should judge about that.

Q. How high out of the water is the bridge of the "Helene"?

A. At that time, I should say about twenty or twenty-five feet.

Q. Did you observe anybody on the stern of the "Celtic Chief" as she was approaching the "Arcona" in this way?

A. I couldn't fix any particular person that I observed. [2929—2098] I may have seen there walking around I wouldn't like to swear to it.

Q. Are you prepared to say that the search-light was on the "Celtic Chief" up to the time that the "Mikahala" pulled off to the eastward?

A. My impression is that it was shining on it or near it most of the time, that is, at that time when she came off. I don't recollect positively, but my impression is that the light was there.

Q. Now, how is it, Captain—I withdraw that. You said that your impression was that if the "Arcona" had not got under way the "Celtic Chief" would have run into the "Arcona." That, you said, was your impresssion? A. Yes.

Q. That's correct, is it? A. That's correct.

Q. Now, if you were forward of the "Arcona" four or five hundred feet, somewhat to the westward of the line of the "Arcona," how is it, if the light was shining on the "Celtic Chief" that you are not able to state positively that the "Celtic Chief" was over to the eastward of the "Arcona" and would not have run into her, in view of the fact that the "Mikahala" was pulling her off to the eastward?

(Testimony of R. Nelson.)

A. What is the question?

Mr. OLSON.—Read the question.

(Question read.)

A. I don't quite gather what you want from that question.

Q. All right, I'll restate it. If the light, the search-light, was shining on the "Celtic Chief" and, as a matter of fact, she was all ready pulled over to the port side of the "Arcona" at the time that you observed, as you thought, she was within twenty or thirty feet of her, how was it that you were unable to see [2930—2099] positively that she was out of the line of the "Arcona" so that she would have rammed her, if you were on the other side of the "Arcona" and forward?

A. I couldn't say exactly, how much she had been pulled to the eastward. I couldn't make that certain.

Q. Now, at the time that you observed that she was, as you judged, within twenty or thirty feet of her, were you looking at her across the stern of the "Arcona" or behind the stern of the "Arcona"? What was her position?

A. I think that I could see both of them together.

Q. You mean to say that you could see the "Celtic Chief," astern of the "Celtic Chief" and also across the stern of the "Arcona"?

A. Part of the "Celtic Chief" stuck further past the stern.

Q. At the time that you observed that she was within twenty or thirty feet?

A. Why yes.

(Testimony of R. Nelson.)

Q. Then you knew she would ram her?

A. I couldn't tell.

Q. Was she was pointing towards the "Arcona" at that time? A. In that direction.

Q. Then she was not pointing to eastward or westward? A. Not to westward.

Q. If she was eastward of the "Arcona" that you could see across the stern of the "Arcona," must she not necessarily be pointing westward if she was pointing toward the "Arcona"?

A. I don't think, not necessarily, no. She was in the same general direction that she had been on the reef, except for that slight pull.

Q. If you saw her across the stern of the "Arcona," was she running forward to the "Arcona"? [2931—2100] A. In the same general line.

Q. Answer my question—was she running forward to the "Arcona"?

Mr. WARREN.—I submit the answer is perfectly responsive.

The COURT.—I'm not going to rule at this time or make any comment. I simply say that counsel should be courteous.

Mr. WARREN.—I would like the record to show my objection.

Mr. OLSON.—Kindly put this in the record, too. If the Court, please, I seriously object to the inference that I was discourteous to this witness.

The COURT.—Whose inference do you refer to.

Mr. OLSON.—The Court's inference.

The COURT.—I drew no such inference at all and simply made that statement. If it covers the merits,

(Testimony of R. Nelson.)

all right. Simply for future guidance, that's all.

Mr. OLSON.—Now, I would like to have an answer to my question.

Mr. WARREN.—I have no objection that it was asked and answered.

The COURT.—I allow the question.

Mr. OLSON.—Go on and answer the question, Captain.

Mr. WARREN.—Your Honor overrules the objection.

The COURT.—Yes.

A. She was not parallel.

Q. She was not parallel?

A. She was not parallel in the sense that she was alongside; if you mean in the same heading exactly but in a different place, then it might be somewheres near that. Parallel, as I understand it, was alongside.

Q. Then she was not alongside of the "Arcona"?

A. No, sir.

Q. I see. Was her bow not alongside of the stern [2932—2101] of the "Arcona"?

A. No, sir.

Q. Over what part of the stern did you see any part of the "Celtic Chief"? Over what part of the stern of the "Arcona," I'm speaking of.

A. As I remember it, I saw the extreme stern of the "Celtic Chief" over the stern of the "Arcona."

Q. You mean the extreme bow, do you not, of the "Celtic Chief"?

A. No, sir, the stern—she was coming stern first.

Q. Then as you saw her at the time, the stern of

(Testimony of R. Nelson.)

the "Celtic Chief" was visible about over the extreme end of the "Arcona"?

A. I think so, that's as I recollect it now.

Q. And according to your observation, she was heading for the "Arcona" at that time?

A. In that general direction. I would not say exactly. In my mind there was a possibility of a collision.

Q. Then, if that is the case, you couldn't very well have been mistaken to the extent of believing as you say you did that she was about to ram the "Arcona," when, as a matter of fact, the "Mikahala" had already gotten her off to the eastward out of the line of the "Arcona"?

A. I don't know how far out of line.

Q. She couldn't have been very much out of line if you were able to observe her extreme stern over the extreme end of the "Arcona"?

A. I don't think she could have been very far off.

Q. Very few feet, if anything; isn't that so?

A. I think so.

Q. So that the "Celtic Chief" must have approached the "Arcona" almost in a direct line?

A. That's my impression. [2933—2102]

Q. When were the line of the "Helene" and the strain on it let loose from the "Celtic Chief"?

A. I think as soon as she started to come rapidly off. As soon as she came clear of the bottom, off of the reef.

Q. About how far do you think she was from the "Arcona" at that time when the line from the "Helene" was let go?

(Testimony of R. Nelson.)

A. I am unable to say exactly; things move around so quickly.

Q. Four or five hundred feet?

A. Approximately, half our or a third of our length.

Q. About a hundred and fifty feet would you say she had gone, or about three or four hundred feet from the "Arcona," five hundred feet?

A. Say about three or four hundred feet.

Q. From the "Arcona"?

A. Yes, a little less than half our length.

Q. Now, there were no other vessels pulling on the port side of the "Celtic Chief" except the "Helene" and "Likelike" that night? A. That's all.

Q. The only other agencies were the "Mikahala," the Miller Salvage Co., with its anchor, and the "Arcona," in so far as she had lines attached to the "Celtic Chief"; is that correct?

A. I think that's correct; yes.

Q. And the "Arcona" was lying directly astern of the "Celtic Chief," in line with the "Celtic Chief"? A. Almost, not quite.

Q. A slight, slightly to the eastward?

A. Slightly to the eastward. [2934—2103]

Q. And the "Mikahala" was still farther to eastward? A. Yes, sir.

Q. How many times did you observe that the "Celtic Chief" moved and stopped again after she first began to move after eleven o'clock or near twelve o'clock on Wednesday?

A. That was something I couldn't answer.

Q. More than once was it not?

(Testimony of R. Nelson.)

A. She seemed to me to move along several times and stop a little bit, like when a big swell came in to move a little bit more.

Q. You didn't observe that from looking at the vessel itself? A. No, sir.

Q. That was from your range lights?

A. From the lights I had.

Q. And how near was the nearest one of those according to your judgment?

A. They were in the channel; they could be taken off the chart if you want the exact distance.

Q. I don't care about the chart just now. I want your judgment about the distance of those lights.

A. They might have been a half a mile or more.

Q. They might have been a half a mile or more? And the farthest one away?

A. I don't know the exact position of the lights.

Q. It would be considerable farther than the first one?

A. It might have been way over in town somewhere.

Q. Several miles away, perhaps?

A. Perhaps, yes.

Q. Now, then, in order to observe any mild change in those range lights at that distance, it would be necessary for the "Helene" to have moved several feet at least? A. It would. [2935—2104]

Q. Could you observe any mild change if she had moved as little as five or ten feet?

A. Well, I'd say the light—I couldn't say that I

(Testimony of R. Nelson.)

did. I might have been able to have seen that change.

Q. Your experience in noting changes of position from range lights at that distance or a distance approximating this which you had that evening would lead you to the conclusion now that you could make an observation of a change, a mild change if the change of your own vessel was only five or ten feet?

A. I wouldn't like to swear to that as a fact. I might and might not. If one light was exactly in line with the other, possibly, but it's doubtful.

Q. In other words, you think it would require a change of more than five or ten feet for you to observe any mild change? A. I think it would.

Q. Then, if you noted several changes before her final starting to move, she must have moved in the course of all of those changes thirty or forty or fifty feet, must she not, before she finally began to come out quickly?

A. I think a little more than that, if anything.

Q. And those intervals were gradual and comparatively regular, were they, between a quarter to twelve and fifteen minutes after twelve, during that half hour?

A. Fairly regular. I didn't notice any particular times; didn't take any notice of it.

Q. How many times were you on the "Celtic Chief"? A. Twice.

Q. What were you doing there?

A. Looking after the end of my towline.

Q. That was all you were there for? [2936—

(Testimony of R. Nelson.)

2105] A. That was all I was there for.

Q. How long? When did you go on the first time?

A. Tuesday morning, I think.

Q. Tuesday morning? About the time that you took over the line of the "Mauna Kea"?

A. No, sir, later than that.

Q. How much later?

A. I think in the neighborhood of eleven o'clock.

Q. And you went on the second time on Wednesday in the afternoon? A. Wednesday afternoon.

Q. Between two and four o'clock?

A. About half-past two, I think I went there.

Q. Now, the first time that you went on on Tuesday, how long were you aboard?

A. I remained somewhere around a half an hour.

Q. And you were *look* after the end of your line during that half hour? A. Yes, sir.

Q. Pretty busily engaged? A. Yes, sir.

Q. Did you march around the ship to take any observations? A. I walked around.

Q. And on Wednesday afternoon you were pretty busily engaged with the repairing of your line?

A. Yes.

Q. Didn't have much time for running around and making observations of the "Celtic Chief"?

A. Not much time. As soon as I got through my work I went back aboard.

Q. When did you observe the lightering operations?

A. Nearly all the time from the time I started. I saw more or less of it.

Q. Were you making any particular note of the

(Testimony of R. Nelson.)

lightering operations while you were aboard the "Celtic Chief"? [2937—2106]

A. Nothing in particular.

Q. Did you examine any of the boilers?

A. No, sir.

Q. Didn't examine the engines? A. No, sir.

Q. Didn't examine the windlass?

A. I glanced at them. I didn't examine them.

Q. Did you examine the donkey-engine or the winch?

A. Not to make an examination. As I say, I looked at them.

Q. Did you observe what kind of a donkey-engine it was—make or type? A. I did at the time, yes.

Q. What type was it?

A. The type of an ordinary English hoisting engine, as near as I remember it; steam boiler and an engine inside of a house, the aft end of the forward house.

Q. Did you observe the kind of—did you examine the hoisting appliances?

A. Not closely; no, sir.

Q. While you were on board of the "Celtic Chief," did you observe it at all? A. I observed it, yes.

Q. Did you examine the method of operating those appliances while you were aboard of the "Celtic Chief"?

A. I didn't examine them, no. I observed them.

Q. You said that those appliances, that the arm, the hoisting arm, was of such a kind that it could not be raised. Now, why did you say that? How do you know that it could not be raised?

(Testimony of R. Nelson.)

A. Because the man had a turn on a pin on the deck with his rope.

Q. How do you know that?

A. I observed that as I passed by.

Q. While you were aboard of the "Celtic Chief"?

A. Yes, sir. [2938—2107]

Q. Didn't you observe whether or not the "Celtic Chief" didn't have some other method of raising that arm?

A. They had other methods. They could have raised it.

Q. Are you prepared to swear that that arm over the side of the vessel was incapable of being raised or lowered by government from the engine? Are you prepared to say that they didn't have an appliance of that sort? A. I didn't observe any, no.

Q. You didn't observe any, but there might have been, as far as you know?

A. It might have been rigged up afterwards.

Q. It might have been rigged up and in use or capable of being used if any accident happened at any time, as far as you know?

A. No, I don't think it could.

Q. And yet you didn't make any careful examination of the appliance?

A. No, sir, I didn't need to make an examination of it.

Q. You're prepared to swear now that they did not, that they could not hoist and lower that arm with the sling attached to it?

A. Not instantly, no, as it would be required. They would have to take it some other place and take

(Testimony of R. Nelson.)

a hitch around the winch.

Q. How do you know that?

A. That was my impression from what I observed.

Q. But you did not make a careful observation to see? A. A careful examination?

Q. Or careful observation.

A. Just ordinary glancing about as I passed by, that's all.

Q. Did you see that the "Mikahala" had actually pulled the "Celtic Chief" off to eastward somewhat, up [2939—2108] to the time that you observed that she was within twenty or thirty feet of the "Arcona"? Did you make any such observation?

A. I think that I saw that her line was taut and that she was pulling in that direction.

Q. Did you see whether or not the "Celtic Chief" had been pulled further to eastward up to the time that she came within twenty or thirty feet of the "Arcona" as you've testified?

Mr. WARREN.—I object to the question as asked and answered.

The COURT.—Objection overruled.

Mr. OLSON.—Answer the question, Captain.

A. Please read the question again.

(Question read.)

A. I think she was pulled a little to the eastward.

Q. Did you see that? A. I was looking at her.

Q. Had you seen that she moved to eastward up to that time?

A. Well, if I testified that, why, I must have seen it, must have been looking at it.

Q. Then you did, did you?

(Testimony of R. Nelson.)

A. I saw the line that she was—well, I don't know exactly.

Q. Go on and testify.

A. I might say that she was pulled a little to eastward.

Q. And that's what you saw? A. I think so.

Q. When did you first observe that she began to pull to eastward, somewhat?

A. I couldn't testify on that. Things moved around so rapidly at that time that I couldn't fix any particular time.

Q. But she wasn't pulled so much to eastward. According to your observation of it, you thought that if she [2940—2109] had gone twenty or thirty feet further without the "Arcona's" moving, that she would have rammed the "Arcona's"

A. That was my impression of it, yes.

Q. Did you see the "Mikahala" at that time?

A. I could see her lights, I think.

Q. Now, was it ahead of the "Arcona" or did you see her?

A. It must have been on top of the "Arcona."

Q. I'm asking you what you now remember.

A. All the vessels changed their positions pretty rapidly. As I remember it, I saw the "Mikahala's" lights over the top of the "Arcona."

Q. So that, as you were forward of the "Arcona" several hundred feet somewhat to westward, it necessarily follows, does it not, that the "Mikahala" was not forward of the "Arcona," at any time? Isn't that so? A. I think that's right.

(Testimony of R. Nelson.)

Q. Now, did you observe whether she was further off to one side or the other with reference to the "Arcona"?

A. That I couldn't say. She was on the other side. I couldn't judge very well the distance.

Q. How much further was she forward?

A. That I couldn't say.

Q. You have no idea? Was the "Helene" forward of the "Arcona"?

A. Not to my recollection, no.

Q. And you, immediately that the "Celtic Chief" began to come off rapidly, it surged forward, did you go ahead of the "Arcona"?

A. We hove up to our anchors.

Q. But you immediately began to go forward, did you [2941—2110] not? A. Yes.

Q. So, if the "Mikahala," at any time, had been forward of the "Arcona," you would have observed it very well?

A. I think if she had been ahead of her I could have seen her.

Mr. OLSON.—I have no further questions.

Cross-examination on Behalf of MILLER SALVAGE CO.

Mr. WEAVER.—Q. When the "Celtic Chief" was floated, as she came off the reef, in what direction was she pointing with regard to the "Arcona"? In what direction was she moving with regard to the "Arcona"? Directly toward her or one or the other side of her?

A. A little bit to the westward, I think. Slightly

(Testimony of R. Nelson.)

to the westward of the "Arcona's" position.

Q. And what influenced her direction so that she *she* had got as far as the "Arcona" she did not ram her?

A. The pull of the "Mikahala," because the lines had been cut on the port side.

Q. About what speed was she making when she started to move off the reef, being free?

A. That's a pretty hard question to answer. I could only guess at that.

Q. Could you say it was four miles an hour, one mile or ten?

A. Certainly was less than ten. After she got headway she probably might have been going four or five knots an hour.

Q. Did she start with a mild speed and diminish to a less speed or did she increase in speed as she came off? I speak only of the time after she was free.

A. After she was free the lines of the "Helene" and "Likelike" [2942—2111] were cut, consequently her sternway must have diminished somewhat although the "Mikahala" was still pulling.

Q. Did she start with a sudden rush and then diminish speed or not?

A. I think she did. After she came free with the three vessels pulling on her, I think she came with a rush at that time more than later when the lines were cut.

Mr. WEAVER.—That's all.

Mr. OLSON.—I just want to ask one more question. How many propellers has the "Helene"?

(Testimony of R. Nelson.)

A. One propeller.

Q. And only had one at that time?

A. One at that time, yes.

Mr. OLSON.—That's all.

Mr. WARREN.—No further questions.

Recess.

Mr. WARREN.—I ask leave of your Honor to recall Mr. Strolhin in order that I might put to him one or two more questions as to his record and what was done with it on this occasion.

Mr. OLSON.—I object on the ground that counsel has been afforded full opportunity on that point at the time the witness was on before and the very question that is now asked him was then well known to counsel.

The COURT.—I allow the motion.

Mr. OLSON.—Your Honor allows him to be recalled?

The COURT.—Yes.

**[Testimony of C. H. Strolhin, for Libelants
(Recalled).]**

C. H. STROLHIN, recalled.

Mr. WARREN.—Mr. Strolhin, you have already testified in this case that you were on duty from twelve [2943—2112] o'clock, midnight of December eighth, the night that the "Celtic Chief" came off. I'll ask you if during that watch you made any record of the movements of the ship's engine.

A. Why, I made a record of the time I went on watch, the time I stopped the engines.

Q. What kind of a record?

(Testimony of C. H. Strolhin.)

A. I made a record in a note-book which was kept and turned over to the chief, kept by the chief.

Q. That record contained what?

A. Contained the revolutions, the time and orders from the bridge by telegraph.

Q. And after that watch was over, what did you do with that record?

A. I turned that over to the chief in the morning. He made a copy of that and put it in the official log.

Q. Have you seen your record since?

A. No, I have not.

Mr. WARREN.—That's all.

Cross-examination.

Mr. OLSON.—Did you see the chief copy that record? A. Yes, I did.

Q. You remember now, do you, that you saw the chief copy the record of that particular day in his log-books? A. I was sitting at the table.

Q. For what day? A. That day.

Q. What date? A. The ninth of December.

Q. But you don't remember anything with reference to any other time except the ninth of December?

A. I remember he copies the log every day. [2944—2113]

Q. Did you see him copy anything except for that day any other day? A. I saw him copy his log.

Q. For any other day?

A. I saw him pretty near every day.

Q. Have you seen him copy the log every day?

A. Not every day.

Q. You don't remember whether you saw him copy the fifth, sixth, seventh, and eighth, on the one side of

(Testimony of C. H. Strolhin.)

the ninth, and the tenth, eleventh, and twelfth on the other side of the ninth?

A. I remember that he copied the ninth.

Q. But you don't think that he copied them on those other days?

A. I might not have been present on the ship when he did it; no.

Mr. OLSON.—That's all.

Redirect.

Mr. WARREN.—You say that on December ninth you saw him copy the record. A. Yes.

Q. Now, what was it that he copied into the record on December ninth?

Mr. OLSON.—I object to the question on the ground it is improper redirect.

The COURT.—I allow the redirect.

Mr. OLSON.—If that is the case I don't think your Honor should limit my cross-examination. I want to reopen my cross-examination.

The COURT.—I will allow you to do so.

Mr. OLSON.—You testified, did you not, that it was your record of the ninth of December that you saw copied into the log-book by the chief? [2945—2114]

A. Well, I'll state this. In regards to it being the eighth or the ninth, we figure the day from twelve o'clock at night.

Q. That is what I understand, too. You went on duty at twelve o'clock?

A. I went on duty at twelve o'clock.

Q. It was the record from twelve o'clock onward

(Testimony of C. H. Strolhin.)

that you saw copied into the log?

A. I saw that record copied.

Q. And that's what you were talking about? Was that the date of the eighth or ninth? I'll state that the "Celtic Chief" came off the night of Wednesday, December eighth or the morning of the ninth.

A. That's the day, December the ninth, that I'm talking about.

Q. And that's the day you are talking about when you say you saw the record of that day copied by the chief?

A. I don't know how much of it he copied. There was two or three days copied, probably.

Q. But you don't know of anything else?

A. I know that was copied.

Q. You don't know of any other days except for that period?

A. Oh, yes, he copied through the preceding watch.

Q. Do you know that you saw him copy that on that next day?

A. Yes, I know I did. He showed me, he said, "Strolhin, this is not right."

Q. Are you changing your testimony or supplementing it? A. I'm telling you what happened.

Q. If you saw testimony copied by the chief into the log-book, now, was it for the eighth of December or ninth of December?

A. It was the watches up [2946—2115] to this, eighth and ninth.

Q. You saw them both copied in?

A. I saw him sit down; he said, "You bring your log-book." I said, "Yes, here is the log-book."

(Testimony of C. H. Strolhin.)

Q. Did you actually see him copy sentence for sentence? A. I saw him write it down.

Q. You didn't see him copy it?

A. I'm not supposed to read his log.

Q. Did you see him copy it?

A. No. The man is not going to sit there and copy incorrect.

Q. The question I'm asking you is whether or not you compared what he copied in his log-book with what you had in your note-book?

A. No, I'm not supposed to do it.

Q. I'm asking you whether you did.

Mr. WARREN.—He said no. I submit it's answered.

Q. So you don't know whether or not he copied it correctly, of your own knowledge, do you?

A. Well, you've got his word for that.

Q. I'm asking you if you know of your own knowledge now. Kindly answer the question as you are obliged to do.

Mr. WARREN.—I submit that is improper cross-examination.

Mr. OLSON.—I'll withdraw the latter part of that question and ask the Court to instruct the witness to answer my question.

The COURT.—I think the witness understands that. Give Mr. Olson a direct answer.

A. I tell you, Judge, it's this way. Sometimes you can't remember everything exactly. I tell what I remember, that's all.

The COURT.—I will allow the question.

Mr. OLSON.—Now, let us have your direct answer

(Testimony of C. H. Strolhin.)
to the [2947—2116] question.

A. What is your question?

Q. Did you compare what the chief wrote down in his log-book with your notes? A. No, I did not.

Mr. OLSON.—That's all.

Mr. WARREN.—That's all. Anything, Judge Weaver?

Mr. WEAVER.—No.

[Testimony of W. B. Lycett, for Libelants.]

Direct examination of W. B. LYCETT, a witness called on behalf of Inter-Island Steam Navigation Co., and sworn.

Mr. WARREN.—What is your occupation, Mr. Lycett? A. Marine engineer.

Q. And how many years have you been marine engineer? A. About fifteen years.

Q. And in December, 1909, when the "Celtic Chief" was on the reef, where were you engaged?

A. I was chief engineer of the "Helene." Chief engineer of the steamboat "Helene."

Q. And what was *you tide* of duty? At what time were you on duty? A. At all times, mostly.

Q. What time on watch in the engine-room?

A. From eight to twelve; that was my watch.

Q. And what time on Wednesday evening and Wednesday night?

A. I was on watch on Wednesday night from eight to twelve.

Q. December 8? A. I was on watch.

Q. And, that being the night the "Celtic Chief" came off the reef, did you make any record of the

(Testimony of W. B. Lycett.)

movements of the engine while on watch?

A. I always do.

Q. And how did you make that? [2948—2117]

A. Put it down in the log. We must keep an official log, keep a record of all things that happen in the engine-room.

Q. What record in the engine-room itself?

A. We always keep the log or revolutions, steam pressure, gauge—

Q. Just how do you keep that?

A. We always keep a book down there for the assistants each watch to put their watch down, log their own watch and from that I transfer.

Q. That's the assistants?

A. My own log I do the same.

Q. Have you the log of the "Helene"?

A. I have it.

Q. Will you produce it?

A. It's outside the door there.

Q. Independently of the log and without looking at it at all, have you any remembrance of the speeds of the engine and variations of the engine on Wednesday night?

A. Yes. It was going full speed from about eleven o'clock until she came off. There's times there that she did vary a little bit.

Q. Before or after eleven o'clock?

A. Before eleven.

Q. Before eleven?

A. Before eleven o'clock. Of course, I haven't made no record of that in the log. From eleven o'clock on we had full speed.

(Testimony of W. B. Lycett.)

Q. At what time did she come off?

A. According to my log, twelve twenty-two when she come off.

Q. Twelve twenty-two?

A. Twelve twenty-two A. M.

Q. When did you go off duty?

A. How's that? [2949—2118]

Q. When did you go off duty Wednesday night?

A. Thursday morning; twelve twenty-two she come off.

Q. She came off, then, before your watch ended?

A. Twelve o'clock we ended.

Q. Your watch having ended, what did you then do? Where did you go?

A. I went up on deck right next to the skylight.

Q. Skylight over where?

A. Above the engine-room.

Q. How long did it take you to get up there?

A. It took me about two minutes, I guess, on the outside. I wasn't up there in a rush up; I just walked up.

Q. Having gotten there, did you ever make any observations as to the engine?

A. I did. I was watching the engines all the time. All the time I was watching the boat I was keep my eye on the engine mostly.

Q. Do you know whether or not, after twelve, midnight, there was any change in that engine?

A. I think she come off—

Q. Prior to the ship coming off? A. No.

Q. Was there or was there not? A. No.

Q. You said there was not?

(Testimony of W. B. Lycett.)

A. Bound to slow down when the engine is towing that way, bound to slow, the engine is bound to slow down if she's got a tow behind her.

Q. If there had been a change of throttle would you have noticed it? A. I'd have notice.

Q. Would you have known it?

A. I would have.

Q. How?

A. The sound of it and I can see the throttle from the skylight. [2950—2119]

Q. Who had the watch immediately after twelve that night? A. Mr. Reid.

Q. What is his first name?

A. Tom. I don't know his second.

Q. Do you know where he is now? A. I do not.

Q. Have you any idea if he is in this territory?

A. I'm pretty sure he is not.

Q. What?

A. I'm pretty sure he is not here.

Q. How long since you've seen him?

A. Since I joined the "Nooheau"; that's about a year and nine months ago.

Q. Is this the log of the "Helene" to which you have referred? A. That is the log.

Q. Referring, now, to the entries of December 7, 8, and 9, I'll ask you in whose handwriting they are.

A. Mine.

Q. When did you make those entries?

A. The day after we come off, on the tenth, copying from the slips from the engine-room.

Q. Now, referring to the entries having to do with the watch from twelve o'clock midnight of December

(Testimony of W. B. Lycett.)

8 to early morning of December 9, I'll ask you where did you get the facts upon which those entries were made.

A. From the second assistant engineer. He enters his log on a slip and I get that and enter it into the books after twenty-four hours, as you notice here.

Q. Every four hours? How long watches were they? A. Six, three watches.

Q. You had two assistants?

A. Yes; two assistant.

Q. Three watches, three four hour watches.

Q. Now, the notes that you made from memoranda on the paper slips from the engine, in the engine-room for the watch of the first assistant—

A. Second assistant.

Q. Second assistant from twelve o'clock midnight, do you know [2951—2120] whether or not they are correctly transcribed into this book?

A. Yes, I believe they are copied right.

Q. Did you compare them? A. I did.

Q. Then you can swear that this log, as to those watches, is an absolutely correct copy of all that was indicated on those slips? Prior to eleven o'clock of the night of December 8 at which time you say you went full speed, at what speed was the engine running? A. About three-quarter speed.

Q. For how many hours prior to eleven?

A. I was on watch from eight to eleven; then I hit her up full speed, all I could get out of it.

Q. During your watch up to eleven, it was three-quarters?

(Testimony of W. B. Lycett.)

A. About three-quarters. It was running pretty good speed; you could get a little more out of her.

Q. Were there any stops made from the beginning of your watch? A. On that particular night?

Q. That night?

A. No, there was no stops made on that watch.

Q. Have you any recollection as to the operation of this engine prior to 8 P. M. of December 8 without your referring to this log?

A. Yes, I do. We had to stop down once, to slow down.

Q. About what time of day was that?

A. About noontime.

Q. Of Wednesday? A. Of Wednesday.

Q. The last day. Any other stops between then and midnight? A. Not that I remember.

Q. Now, during Monday, during Tuesday, have you any recollection independently of this log as to how the engine was running?

A. It was running sometimes full speed, sometimes three-quarter speed, sometimes I had to slow down, something of that sort.

Q. Do you remember what times it was slow—reduced, and full?

A. I don't remember; three-quarters speed most of the time.

Q. How with respect to tides?

A. There were times there that they were waiting for the tide to [2952—2121] come and just kept the line taut, clear until the time to tow. There was no use of towing on it. Still I haven't got that all down.

(Testimony of W. B. Lycett.)

Q. Have you any recollection as to the tides on that day? A. I have not.

Q. Do you know what time it would be high tide that night?

A. I do not remember. Don't know anything about it.

Q. Can you, by looking at this log, recall to your own memory anything further, so that having looked at it you can recall to your mind and testify independently of the record what rate the engine ran during all of Wednesday prior to 8 P. M.?

A. Yes, I remember that.

Mr. OLSON.—During all of Wednesday, prior to 8 P. M.

A. All of Wednesday.

Mr. WARREN.—Yes, including stops and approximately what part of the time reduced speed and what time full speed.

Mr. OLSON.—I submit the witness has already answered he was only on watch from eight to twelve and he couldn't answer.

Mr. WARREN.—I now desire to offer in evidence the log, your Honor, practically for the 6th, 7th, 8th, and 9th days of December, 1909, as identified by this witness.

Mr. OLSON.—I object to the offer if the Court please, on the ground that it's hearsay and a self-serving declaration; furthermore, on the ground there is no foundation; further, it is incompetent, irrelevant, and immaterial.

Mr. WARREN.—I'll say, more particularly as to the entries of the watch beginning 12 midnight of

(Testimony of W. B. Lycett.)

December 8, it appearing from the testimony of this witness, your Honor, that the second assistant, engineer Reid, who made this record which has been transcribed, is now out of the territory.

The COURT.—It will be marked for identification subject to the same ruling as the other.

(Marked Exhibit "N," Lycett, for Identification.)

Q. Do you know the horse-power of the "Helene," Mr. Lycett.

A. 470. [2953—2122] Average of about 465 or 470. Between 465 and 70.

Q. Do *you when* the last card was taken?

A. I do not.

Q. Did you take any yourself? A. I have not.

Q. How do you know the horse-power?

A. The record. I have never taken the indicated horse-power.

Mr. OLSON.—What?

A. A record I've never taken cards. I've figured it out.

Mr. WARREN.—Cross-examine. One moment. What is your licensed steam capacity?

A. 1500 ton.

Mr. WARREN.—Cross-examine.

Cross-examination of W. B. LYCETT on Behalf of Libellee.

Mr. OLSON.—When you say that her horse-power is between 465 and 70, do you mean that that is her indicated horse-power?

A. Yes, that's the horse-power.

Q. What was the gauge pressure shown between 11 and 12 o'clock of Wednesday night?

(Testimony of W. B. Lycett.)

A. Between 155 and 160.

Q. Pounds? A. Pounds.

Q. How much is she entitled, how much pressure is she entitled to under her license?

A. 160 pounds.

Q. How many revolutions per minute were her engines making between 11 and 12?

A. On the average about 115 or 17.

Q. Between 115 and 17 per minute? A. 17.

Q. 115 and 117. How many revolutions per minute while she's running free does she make?

A. Average 125 or 26.

Q. Do you mean to say that there was only a reduction of about 8 or 9 or 10 revolutions per minute from what she does running free *she* she was *tide* up there? A. She turns up 134 or 137.

Q. Did you observe that she was making 115 or 17?

A. I believe there's the log there. I don't remember now. And that average at that time 115 or 117 is as far as I can [2954—2123] remember.

Q. How many propellers did the "Helene" have?

A. One.

Q. And what is the diameter of that propeller?

A. I don't remember.

Q. Don't know the pitch of that propeller?

A. 9 feet, 6 inches.

Mr. OLSON.—That's all.

Mr. WEAVER.—No questions.

Mr. WARREN.—That's all.

[Testimony of James Devlin, for Libelants.]

Direct examination of JAS. DEVLIN, a witness called on behalf of Libellants Inter-Island Steam Navigation Co., and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. What is your occupation, Mr. Devlin? A. Sir?

The COURT.—Your occupation.

A. Engineer.

Q. How long have you been an engineer?

A. Engineer? Since I've been in the business?

Q. Yes. A. About forty years.

Q. And in December, 1909, when the "Celtic Chief" was on the reef out here where were you employed? A. I was employed on the "Mikahala."

Q. What position? A. Chief engineer.

Q. What were your watches?

A. My watch? From six to twelve A. M. in the morning, from six to twelve P. M. at night.

Q. And on the night of December 8 when the "Celtic Chief" the night of the day that the "Celtic Chief" came off the reef, you were on duty from six to twelve? [2955—2124]

A. From six to twelve; yes.

Q. Now, can you remember anything about the operation of that engine that night during your watch? A. The first night?

Q. Wednesday night.

A. Wednesday night I remember going ahead on her full speed at 11:30 P. M.

Q. How do you remember that?

A. I remember that from the captain singing

(Testimony of James Devlin.)

down—let me see; captain spoke out, “Full speed ahead.”

Q. How did he give you the various orders for working the engine? A. For working the engine?

Q. Yes.

A. When *we taking* the lines, parcelling the lines, he would shout down.

Q. How do you remember that the order for full speed was given to you by the captain at eleven-thirty that night? How do you remember it was that time?

A. I remember that because when he told me ease up on the engines that’s all I remember.

Q. Did he tell you to ease up? A. Ease up.

Q. At eleven-thirty?

A. No, no, not eleven-thirty. Told me to work up full speed.

Q. What time? A. Eleven-thirty.

Q. How do you remember it was eleven-thirty?

A. I looked at the clock at the time he spoke to me.

Q. How had you been running just prior to eleven-thirty? A. Reduced speed.

Q. What do you mean by reduced speed?

A. Eased up on the engines.

Q. Approximately what is that? What speed—quarter, half, three-quarters?

A. About three-quarters.

Q. About what?

A. About three-quarters speed.

Q. How long had you run on reduced speed prior to eleven-thirty, without any change?

A. I ain’t sure exactly how long. [2956—2125]

Q. Well, can you tell us approximately?

(Testimony of James Devlin.)

A. From seven o'clock. I wouldn't say to that.

Q. Seven o'clock is your best recollection?

A. Yes. From seven to eleven-thirty.

Q. No change at all between seven-thirty or approximately seven-thirty up to eleven-thirty?

A. Nothing at all.

Q. When you went on duty at twelve or rather when you left your watch at twelve midnight, how was the engine running then?

A. I run her running full speed ahead.

Q. Where did you go immediately following midnight that night? A. I went between decks.

Q. Where?

A. On the lower deck right alongside the boiler-room, engine-room.

Q. For what purpose?

A. There was something on fire by the ———; what it was I couldn't make out.

Q. You paid no more attention to the engine then?

A. No more as long as she was going.

Q. Do you know whether or not there was any change in the running of the engine after midnight, say half an hour?

Mr. OLSON.—Object to the question on the ground that it appears that the witness paid no attention to the engines after that time save for the fact that they were running. I submit he has already answered the question.

The COURT.—Let's see what he means. When you said that after twelve o'clock midnight you paid no attention to the engine what did you mean?

A. I mean I was up on the upper deck looking at

(Testimony of James Devlin.)

them there vessels there.

Q. After you left the engine-room at midnight you say you were paying no particular attention to the engine. Would you know if there were any change in it? A. Yes, I would know right away.

Q. How would you know?

A. I know by the sound of an engine.

Q. Does it make any difference what part of the ship you are in? [2957—2126]

A. It doesn't make any difference what part of the ship you are in.

Q. Now, can you tell whether or not after twelve o'clock midnight you noticed any change in the running of the engine? If so, when?

A. I should say the engine was eased up about twelve twenty-two or twelve twenty-three.

Q. Have you any remembrance of the engine slowing up after midnight? A. Only that time.

Q. How did you take note of the time then?

A. My watch.

Q. Where were you? A. Right between decks.

Q. You remember all this independently of the log itself? A. Independently, yes.

Q. What is your licensed steam capacity for the "Mikahala"? A. My license?

Q. No, the licensed steam capacity?

A. Four hundred horse. That was four hundred horse-power.

Q. What is the pressure?

A. 85—85-pound pressure.

Q. How do you know the horse-power of the "Mikahala"? A. I'd have to figure that out.

(Testimony of James Devlin.)

Q. Have you figured it out?

A. I have figured it out. I haven't figured it out for some time.

Q. What did you figure it at?

A. 404 horse-power.

Q. How long ago about?

A. Oh, about a year, year and a half ago, I figure it out but I got the wrong numbers. A year after that I went over it again and I seen it was 440, I believe. It come down to 404.

Q. Has there been any change in the engine since the time the "Celtic Chief" was on the reef?

A. No changes at all, only repairs to the boiler and repairs to the machinery.

Q. Does that make any difference to the horse-power? A. No, sir.

Q. Do you know the pitch of the "Mikahala's" propeller? A. 13 foot.

Q. And do you know the diameter?

A. Diameter is 9 foot eight. [2958—2127]

Mr. WARREN.—Cross-examine.

Cross-examination of JAMES DEVLIN on Behalf of Libellee.

Mr. OLSON.—Q. How many revolutions per minute did your engine make from eleven-thirty until twelve o'clock Wednesday night?

A. Eleven-thirty until twelve o'clock?

Q. Yes.

A. Make 78 as near as I can come to it.

Q. Seventy-eight per minute? A. Yes, sir.

Q. How many revolutions would those engines make at that time running free? A. 86 or 87.

(Testimony of James Devlin.)

Q. Do you mean to say—

A. I made a mistake there. She makes 65.

Q. And how many revolutions running free?

A. 87, 86 or 87.

Q. And did you observe that it was making that during that time from 11:30 to 12:00?

A. Yes, sir.

Q. Was her indicated horse-power at that time 404? A. What is that, sir?

Q. Was her indicated horse-power at that time 404?

A. Her indicated horse-power? I haven't got that.

Q. What was her horse-power at that time?

A. I have to work it out.

Q. What is that?

A. I have to work out all the figures. I haven't got no indicator.

Q. And you worked it out to be how much?

A. 404.

Q. And that was her horse-power at the time she was towing on the "Celtic Chief"?

A. That was her horse-power.

Q. At that time?

A. At that time. That was her horse-power at that time.

Q. It wasn't more than that, was it?

A. I couldn't say that. It might have been. No, it was no more; it wouldn't be more than 404.
[2959—2128]

Q. Now, did the gauge show that she had 85 pounds of steam pressure during that half hour that

(Testimony of James Devlin.)

you were running full speed?

A. From 80 to 85. I allowed her 80.

Q. What is she licensed to carry? What amount of pressure? A. 85.

Q. That's the limit? A. That's the limit.

Q. And during that half hour she maintained—

A. She'd rise up to the gauge.

Q. 80 or 85? Was it 85 or 80?

A. 80 or 85. 85 is her average from 11:30 until 12:00.

Q. You said the pitch of her propeller was thirteen feet? A. Thirteen feet.

Q. And the diameter 9 foot 8? A. 9 foot 8.

Q. And that is the propeller she had at that time?

A. That's the propeller, yes.

Q. Did she have more than one propeller?

A. That's all, only one.

Mr. OLSON.—That's all.

Mr. WEAVER.—No questions.

Mr. WARREN.—The watch of the chief began 8 P. M. Wednesday night and the watch of the second assistant, Reid, began 12 midnight, the watches being four hours each. I'll simply make a statement that I've made inquiries and, as far as I can ascertain, Reid is at the coast. Captain Haglund can swear to that, if necessary.

[Testimony of Frank C. Poor, for Libelants.]

Direct examination of FRANK C. POOR, a witness called on behalf of Libellants Inter-Island Steam Navigation Co. and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. Mr. Poor, in December, 1909,

(Testimony of Frank C. Poor.)

what was your occupation? [2960—2129]

A. Clerk on the Inter-Island wharf.

Q. What were your duties?

A. Duties were to supervise the receiving and delivery of freight from the various steamers; also to pay off the crews of the respective steamers.

Q. Did you have anything to do with the paying of the crew of the steamer "Mikahala"?

A. I have.

Q. For the week in which operations were conducted out at the "Celtic Chief"? A. Yes, sir.

Q. I'll show you a pay-roll in this book of paid bills of the Inter-Island Steam Navigation Co., Ltd., and ask you if you can identify this paper.

A. I can.

Q. What is it?

A. A true pay-roll of the steamer "Mikahala," December the 3rd, 1909.

Q. Was it from the regular pay of the crew? Were any other payments made?

A. Yes, there was payments for sixteen hours overtime also.

Q. As appears by this pay-roll? A. Yes, sir.

Q. In whose handwriting is this, do you know?

A. The handwriting of the pay-roll? Mr. Harvey—Frank Harvey.

Q. Who paid the men? A. I did.

Q. And have you any personal knowledge of the items of overtime that are set out on this page and paid?

A. Nothing more than it was for overtime paid in operations performed on the "Celtic Chief."

(Testimony of Frank C. Poor.)

Q. How much in all was paid to the crew of the "Mikahala" for overtime? A. \$160.00.

Q. Whose signature is this over the sum paid?

A. That's my signature.

Q. When did you put that on?

A. After paying the crew, after the crew were paid.

Mr. OLSON.—I have no objection to the witness testifying without the pay-roll itself being put in, that there was \$160.00 [2961—2130] overtime paid to the "Mikahala" crew for services at the "Celtic Chief."

Mr. WEAVER.—I admit that.

Mr. WARREN.—That's all, then, Mr. Poor.

Mr. OLSON.—I'll admit that the Inter-Island Steam Navigation Co. can show that they paid \$76.00 for overtime paid to the crew of the "Likelike" for services performed in connection with the "Celtic Chief" operations.

Mr. WEAVER.—On behalf of the Miller Salvage Co. I make the same admission.

Mr. OLSON.—I make the same admission with reference to the "Helene" in the sum of \$120.00.

Mr. WEAVER.—On behalf of the Miller Salvage Co. I admit \$120.00 was paid for overtime on the "Helene."

Mr. OLSON.—I make the same admission with reference to the "Mauna Kea" in the sum of \$100.00.

Mr. WEAVER.—Make the same admission for the Miller Salvage Co.

Mr. OLSON.—I will admit that the Inter-Island Steam Navigation Co., Ltd., can show that they paid the sum of \$1,059.00 for services performed by steve-

(Testimony of Frank C. Poor.)

dores lightering and discharging cargo of the "Celtic Chief."

Mr. WEAVER.—The Miller Salvage Co. makes the same admission.

[Testimony of C. J. Campbell, for Libelants.]

Direct examination of C. J. CAMPBELL, a witness called on behalf of Libellants Inter-Island Steam Navigation Co. and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. What is your business, Captain?

A. Manager of Inter-Island Steamship chandlery department.

Q. Have you any knowledge of materials furnished from the ship chandlery of the Inter-Island Steam and Navigation Co. to the steamer "Helene"?

A. Have.

Q. Will you state on what occasion they were furnished and what [2962—2131] they were?

A. In 1909, October, when the "Celtic Chief" was ashore, we furnished the steamer "Helene" with one coil of seven-inch manilla rope.

Q. How many fathoms in that coil, Captain?

A. One hundred and twenty-five.

Q. Do you know the weight? A. Not offhand.

Q. Have you made any memoranda? A. I did.

Q. About that? A. I did at that time.

Q. Is this the memoranda to which you refer?
(Handing witness a piece of paper.)

A. Yes, that is the memoranda I made at that time.

Q. Now, does this memorandum serve to refresh

(Testimony of C. J. Campbell.)

your memory as to what were furnished to the Inter-Island vessels in the way of hawsers? A. Yes.

Q. Well, now, with this memorandum, can you testify what the weight of the hawser furnished to the "Helene" was?

A. Yes, according to this 1112 pounds.

Q. Now, the "Mauna Kea"?

A. "Mauna Kea," 3542.

Mr. OLSON.—What's that?

A. That's 12-inch.

Mr. WARREN.—One coil?

A. One coil.

Q. 12-inch manilla? A. Manilla rope.

Q. The "Likelike"? A. One 8-inch, 1469.

Q. "Mikahala"?

A. Two coils of 8-inch, 3,000 pounds; that's 1500 pounds to a coil.

Q. Making a total weight of hawsers furnished to the four vessels 9,123 pounds? A. Yes.

Q. What is the—have you bought and sold manilla hawsers? A. Yes.

Q. For how long?

A. Ten, eleven or twelve years.

Q. Do you know the market value of manilla hawsers in December, 1909? A. Yes.

Q. How much?

A. We were selling rope, manilla rope at 11¢ per pound; that's in coils.

Q. In the coil? A. In the coil. [2963—2132]

Q. Now, have you any knowledge of any—I'll withdraw that. When were these coils furnished to these vessels?

A. At the time that the vessel "Celtic Chief" was

(Testimony of C. J. Campbell.)

stranded here, at the beginning of it. The orders used to come in from the superintendent, Captain Haglund, to furnish such and such rope for such a steamer and orders were filled according to his instructions.

Q. How do you know that these were furnished for service on the "Celtic Chief"?

A. Well, it was delivered to them for that purpose. They went out to the working vessels with those ropes at the time.

Q. Any other materials furnished to the "Mikahala"?

A. Yes, there was an anchor and chain. I am not positive of the weight of the anchor. There was an anchor and chain which had to be replaced to the "Mikahala" on account of loss of anchor and chain at the "Celtic Chief."

Q. Did you make any memoranda about that?

A. Yes, that's my handwriting; that is inch and a quarter chain.

Q. That is the anchor and chain to which you refer? A. Yes.

Q. Can you give us now the weight of the anchor and the number of fathoms of chain?

A. That's the number of fathoms, 15 fathoms of chain, inch and a quarter chain, 91 pound to the fathom which makes 1365 pounds.

Q. Have you bought and sold anchor-chain?

A. I have, sir.

Q. Do you know the value of anchor-chain in December, 1909, that size?

A. Yes. Chain was sold at 6¢.

(Testimony of C. J. Campbell.)

Q. Do you know approximately the weight of that anchor?

A. Well, I can't say exactly; probably in the neighborhood of maybe sixteen or seventeen hundred pounds. That's about her size of anchor that she uses, working anchor; 16 or 1700 pounds, along in that line.

Mr. WARREN.—Cross-examine. [2964—2133]

Cross-examination of C. J. CAMPBELL on Behalf of Libellee.

Mr. OLSON.—Q. Captain Campbell, will you state what this manilla rope cost the Inter-Island Steam Navigation Co.? Oh, I withdraw that. The ship chandlery department of which you are manager is a department carried on by the Inter-Island Steam Navigation Co., Ltd., is it not?

A. Yes, sir.

Q. So that it is a part of the business of the Inter-Island Steam Navigation Co., Ltd.? A. Yes.

Q. What does manilla rope cost the Inter-Island Steam Navigation Co. in its warehouse?

A. At that time?

Q. Yes.

A. Without looking over the books, it would cost somewhere in the neighborhood of probably 9 or 9½¢. I wouldn't swear to that.

Q. It would be somewhere in the neighborhood of 9 and 9½¢? A. Yes.

Q. But 11¢, the retail price, is the retail price at which you sell it? A. That's by the coil.

Q. Well, this was furnished by the coil, was it not?

A. Yes, sir, in original packages.

Q. Now, at that time, what did anchor-chain cost

(Testimony of C. J. Campbell.)

the Inter-Island Steam Navigation Co. in its warehouse?

A. I couldn't say without looking at the books.

Q. Have you no idea?

A. Yes, it cost somewhere about probably close on to 5¢.

Q. Five cents?

A. Or in that vicinity. I wouldn't say exactly.

Q. About 5¢ per pound? A. Yes.

Q. The same for anchors?

A. The anchors cost, our anchors, they are made for ourselves, our own pattern.

Q. You said this anchor was 7¢ a pound?

A. The anchors would probably. I wouldn't say offhand, but it would cost somewhere in the neighborhood of probably 5½¢. It [2965—2134] depends upon where you bought those because sometimes we pay seven cents for anchors we have sold at six. The market fluctuates.

Q. Do you know what became of these manilla ropes that were furnished to these various steamers after they had been used in connection with the "Celtic Chief" operations? A. I do not.

Q. As far as you know they are still retained by the vessels which used them?

A. I couldn't tell you.

Q. They were furnished to those boats?

A. They were furnished to those boats, yes.

Q. You can't say that those boats in the course of the "Celtic Chief" operations wore them out or lost them or anything of that sort? A. No.

Q. Do you know whether or not the anchor that

(Testimony of C. J. Campbell.)

was lost at the "Mikahala" has ever been recovered?

A. I could not say.

Q. You don't know? A. No.

Mr. OLSON.—That's all.

[Testimony of Norman E. Gedge, for Libelants.]

Direct examination of NORMAN E. GEDGE, a witness called on behalf of Libellants Inter-Island Steam Navigation Co., Ltd., and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. Mr. Gedge, what's your business?

A. I am treasurer and secretary of the "Inter-Island Steam Navigation Co., Ltd.

Q. Have you any personal—and were such in 1909, December? A. Yes, sir.

Q. And have you any knowledge of any accounts paid out by the Inter-Island Co. on account of operations at the "Celtic Chief"?

A. I have. [2966—2135]

Q. Can you state from your memory what they were?

A. Well, I can state that we paid Young Bros. an amount and also McCabe, Hamilton, and Renney; a number of amounts to Smith & Lewis and some other amounts for launch hire.

Q. How much did you pay Young Bros.?

Mr. OLSON.—I object, unless it first appears that it is for something in connection with the "Celtic Chief" operations.

A. It is something that I actually handled myself. I paid Young Bros. \$150.00.

Mr. OLSON.—What?

(Testimony of Norman E. Gedge.)

A. I paid Young Bros. \$150.00.

Q. Have you any memorandum about that?

A. I had one that I turned over to you.

Q. Is this the memorandum to which you refer, that \$150.00 item? (Handing witness paper.)

A. Yes.

Q. Does that recall to your mind just what that payment was? A. Yes.

Q. Who actually paid the money?

A. I did.

Q. Will you state just what that payment was for?

A. That was for services of the launch at the "Celtic Chief," pulling wires and lines, taking men in and out.

Mr. OLSON.—The Inter-Island officials.

A. It was for the services of us at the "Celtic Chief."

Q. On what date was that payment made?

A. This payment was made under date December 9; the bill is December 6.

Q. This \$15.00 item that you've referred to McCabe, Hamilton, & Renney?

A. That was for the use of the scow with the donkey-engine on.

Q. Do you know who paid that bill?

A. Yes. I paid it. I think you have the bill.

Q. Any other expenses that you know of than these two you've testified about?

A. Yes, I believe there is an amount of [2967—2136] about \$10.00 paid out for some diving but I didn't get any vouchers for that, in connection with some rope that twisted around the propellers. We had to send a man down to take the rope off. I didn't

(Testimony of Norman E. Gedge.)

get any voucher for that.

Q. Do you know yourself whether payment was made? A. I do.

Q. You didn't make it yourself?

A. I turned it over to our shipping master to pay. I know the—

Mr. OLSON.—I move to strike what was told to the shipping master.

A. I know the man performed the services and got the money, but I have no voucher from the man to show for it.

Q. Who was the shipping master?

A. I think it was Frank Harvey in one case and Mr. Brown in the other. Two men did the diving and they got \$5.00 a piece. There was one other amount that Mr. Kennedy paid out of his pocket for boat hire.

Q. Who paid that money?

A. Kennedy paid it out of his pocket and got it from me.

Q. From you as treasurer?

A. Yes. He didn't get any receipts for any and consequently I have no voucher.

Q. Those are all you are able to recall?

A. Yes, that's all.

Q. Did you see this diving done yourself?

A. No, I did not.

Q. As far as the diving services are concerned, your knowledge is from reports of others?

A. Yes.

Q. Did you pay the money yourself?

A. I paid the money myself.

Q. To the divers?

A. Not the divers. The men came to the office and

(Testimony of Norman E. Gedge.)

asked for it and I referred them to the shipping master.

Q. Did you see the money paid to them?

A. I think not. I have a voucher for that in my bills paid book. [2968—2137]

Q. Did you see that paid yourself?

A. I have an idea that I did, but I won't say. I know they got the money.

Q. You know that by records of others?

A. Yes.

Mr. OLSON.—I move to strike all testimony with reference to the \$10.00 payment for diving on the ground it is hearsay.

The COURT.—I grant the motion.

Q. Now, with reference to this \$10.00 payment that you've testified to concerning hire of a boat by Mr. Kennedy, did you see Mr. Kennedy pay that \$10.00?

A. I got Mr. Kennedy's approval on the voucher.

Q. And you don't know whether Mr. Kennedy paid that amount? A. Not personally.

Q. Based on hearsay entirely? A. Yes.

Mr. OLSON.—Move to strike all that testimony on the ground it is based on hearsay.

The COURT.—Motion granted.

Q. In this Young Bros. launch item, \$150.00, I believe that a part of that was for taking officials back and forth also, was it not?

A. It was for services performed by them taking laborers out, running lines—

Q. Taking officials back and forth also?

A. Whatever the bill states there.

Q. This was partially for transporting officials,

(Testimony of Norman E. Gedge.)

was it not? A. That's what it states there.

Q. That's correct, is it as far as you know?

A. I know Mr. Kennedy went out there and he went with Captain Campbell and Captain Haglund.

Q. You know also Mr. Dowsett went out there?

A. Yes.

Q. And Mr. Lewis at that time one of the attorneys for the Inter-Island Co., and Mr. Wilcox, one of the directors of the company?

A. It may be. [2969—2138]

Q. You don't understand that Mr. Wilcox or Mr. Dowsett had anything to do with the salvage of the "Celtic Chief"?

A. Except that they are directors of the company and are stockholders of the company and interested to that extent.

Q. You don't know what part of this bill of \$150.00 is made up of compensation for transporting officials?

A. It would be a very small amount.

Q. Do you know how much? A. No.

Mr. OLSON.—That's all.

Mr. WEAVER.—No questions.

Mr. WARREN.—I offer at this time, your Honor, to supplement the testimony by showing that the launch was in service by an agreement and this transporting of Mr. Kennedy and Mr. Dowsett happened under this contract was simply part of it, it being entirely subject to orders and being in waiting for any services that it might be called upon to perform.

That's all, Mr. Gedge.

[Testimony of George J. Fern, for Libelants.]

Direct examination of GEORGE J. FERN, a witness called on behalf of Libellants Inter-Island Steam Navigation Co., Ltd., and Matson Navigation Co., and sworn.

Mr. WARREN.—Q. Mr. Fern, December, 1909, did you have anything to do with the operations on the part of the Inter-Island Co. at the “Celtic Chief”? A. I do.

Q. What was the part you had in it?

A. Taking charge of the stevedores, discharging freight off the “Celtic Chief.”

Q. Will you tell us how they worked in discharging that fertilizer from the ship into the boats? What appliances were used?

Mr. OLSON.—Just a moment. Is this for the purpose of showing further expenditures or anything having to do with expenditures at all? [2970—2139]

Mr. WARREN.—No.

Mr. OLSON.—Then that’s all right.

A. Well, I was sent out there to be foreman of the stevedores.

Q. What’s that?

A. I was sent out there to be foreman of the stevedores discharging the freight of that ship.

Q. When did you go out?

A. I went out on the Tuesday afternoon.

Q. And what appliances were rigged up and used on the “Celtic Chief” to get the cargo out?

A. Well, the first thing we do, just rig up the fall and the guy.

Q. What kind of a fall was rigged up?

(Testimony of George J. Fern.)

A. Well, simply rope, about half-inch rope.

Q. And how was the cargo brought out of the hole, out of the hatch? A. By hoisting.

Q. What kind of a hoist? A. By the winch.

Q. What winch?

A. Well, the winch of the ship.

Q. How many bags of fertilizer in a sling could be taken out and were taken out by the winch?

A. In the first beginning, the first sling we try it was six bag and the winch can't raise it over and so we empty two bag, take two bag off and that was raised, raised four.

Q. Hoist four? A. Four bag to a sling.

Q. With four bags in a sling how did that winch work?

A. The winch works all right when there's one sling hoisting at a time. If the after hatch hoist the middle hoist raise at the same time, the winch couldn't pull the two sling up with four bag in each sling.

Q. Could not? A. Could not hoist.

Q. Have you had any experience in working of winches and taking out of cargo before that time and after?

A. Well, experience on winch I don't at all.

Q. I mean generally in your business for the Inter-Island Co. have you had experience in using apparatus to take out cargo?

A. Oh, yes, I do. [2971—2140]

Q. How much? A. What you mean?

Q. How long have you worked at that kind of business?

A. I was eight years in Inter-Island place and

(Testimony of George J. Fern.)

Wilder. When there's no mate around the ship I goes there and stand by look to that work.

Q. And before that what did you do?

A. I was sixteen years in the two company.

Q. What?

A. In the two companies I am sixteen years in there. Eight years in Wilder's and eight years in Inter-Island.

Q. Do you know anything about the condition of that winch?

A. Well, I don't know nothing about the winch before, but the condition I could know the winch is very poor to hoist.

Q. Do you know what kind of water was used for the boiler? A. Salt water.

Q. How do you know that?

A. I saw the pipe leading to the water down the side of the ship pumping water into the donkey boiler.

Q. Do you mean over the side and down into the sea? A. Over the side of the ship, yes.

Q. Captain Miller use that winch any time Wednesday afternoon or Wednesday morning?

A. Yes, I saw him taking a turn at the gypsy-head of the winch once awhile.

Q. Once in a while?

A. Yes. When we load our cargo on the other side when there's *body* there while he's got a chance to turn his tackle around the gypsy-head. I couldn't swear how many times, but he did that.

Q. That is, you say when there was nobody there?

A. Yes, that is when there is none of my boat alongside the ship.

(Testimony of George J. Fern.)

Q. Do you know whether he used that Wednesday at all after six or seven o'clock Wednesday night, Wednesday evening? A. No, he did not.

Q. How do you know that?

A. Because I had the winch all of that time up to ten.

Q. How were you using it?

A. Take my fall on the gypsy-head, [2972—2141] they haven't got chance to put their line on that gypsy-head while I was working.

Q. Were you at both gypsy-heads?

A. Yes, there on starboard and the port gypsy-head.

Q. What were you using the starboard gypsy-head for? A. Take in the guy of the middle hatch.

Q. Take in what?

A. Take in the guy, that main guy.

Q. What do you call that?

A. Generally call that guy.

Q. Do you know what a burthen fall is?

A. That is the middle fall goes on to the barrel of the winch, if there is a barrel. When there is no barrel we generally take the guy to a gypsy-head.

Q. Was there any barrel on this winch?

A. On that winch? Yes, there is a barrel.

Q. Any one using that? A. No.

Q. What did you use the burthen fall on the port gypsy-head for? A. To hoist the after hatch.

Q. What?

A. The hoist the cargo out of the after hatch.

Q. I'm talking about the burthen fall?

A. The burthen fall, just hoist it up and keep a

(Testimony of George J. Fern.)

pull on it to that guy and take it a turn on the pin then slack easy and swing over the side of the ship like that. (Indicating.)

Q. You say that burthen fall was made fast to a pin on the side? A. This burthen.

Q. During the operations in the evening where did you make it fast? A. On the port side?

Q. Yes. A. Always there.

Q. Do you know how much those bags of fertilizer weighed? Did you lift any of them?

A. I did lift some of them—pretty heavy; might be all over 175 or over 250; I can't swear.

Q. Each bag? A. Each bag. [2973—2142]

Q. What would you think would be the average weight of one of those bags?

A. There's two kinds of a bag on that ship.

Q. What?

A. There is two kind of bag on that ship. There's shorter bag and longer bag.

Q. Take the long bag; what would be the average weight of the long bag? A. Over 200.

Q. How much over 200?

A. Well, about 215 or 225, more or less. I couldn't swear to that.

Q. Now, the short bags?

A. The short bag is 175.

Q. Have you in your business used winches on board the Inter-Island steamers?

A. What's that?

Q. Have you in your business used winches on board the Inter-Island steamers?

(Testimony of George J. Fern.)

A. I don't understand.

(Question read.)

A. Well, I'm shipping master, assistant, on the Inter-Island Steamship Navigation Co. I haven't got nothing to do with the winch at all only when there is no mate there, either Haglund or Captain Clarke says to me, "Second mate going home, you better go down the after hatch." That's the time I'll be right there and see how the winch going.

Q. Otherwise that's not your business?

A. No, none of my business.

Mr. WARREN.—Cross-examine.

Mr. OLSON.—No questions.

Mr. WEAVER.—We have none. [2974—2143]

[Testimony of J. F. Haglund, for Libelants.]

Direct examination of J. F. HAGLUND, a witness called on behalf of Libellants, Inter-Island Steam Navigation Co., and sworn.

Mr. WARREN.—Q. What is your business, Captain?

A. Master mariner. At present Superintendent of Inter-Island Steamship Company.

Q. How long have you been superintendent?

A. About thirteen years, I think.

Q. What is your age? A. Fifty-seven.

Q. Have you had experience at sea?

A. Yes, I've been to sea since, I guess, fifty-four years ago.

Q. And what capacities have you served in since you began going to sea?

A. Start in as cabin boy, sailing before the mast, mates, captain.

(Testimony of J. F. Haglund.)

Q. When did you get your first master's license?

A. Master for steam, American papers, I got them 1900—eleven years ago.

Q. And of sailing vessels?

A. Well, my first paper I got in 1872.

Q. First master's papers?

A. No, that's my second mate's paper.

Q. What is that? A. Second mate's.

Q. And your first master's paper?

A. I never had no master's paper until 1911, I mean 1900—eleven years ago.

Q. I mean of sailing vessels?

A. Sailing and steam both.

Q. Have you had any experience in towing vessels [2975—2144] and handling them?

A. Yes, I have.

Q. Handling lines? A. Yes.

Q. Tell us generally what that has been.

A. While I've been, since I've been in the Inter-Island service I have been often towing Inter-Island steamers on several occasions.

Q. Have you had any experience in salving of vessels?

A. I have, yes. Quite a good many instances.

Q. Tell us the names of different vessels that you had to do with in salvage operations.

A. I was out at the "Manchuria" the time she was ashore off Waimanalo. I was also aboard of the "Sheridan" when she was ashore off Barber's Point and the ship or the barque "Ernest Reiger," French barque, ashore off Diamond Head; the "Mirowirz," stranded off Honolulu Harbor; the "Chorusu Maru"

(Testimony of J. F. Haglund.)

off Honolulu Harbor, and the British barque "Alexander Black," ashore at Kahului, Island of Maui; schooner "Jennie Walker," down South Sea Islands, twice ashore; I took her off. Steamer "Kaals," and steamer "C. R. Bishop," ashore on this Island and also on Kauai. I towed them off the reef. And the "Celtic Chief," I guess, the last one. And the "Loch Garve," yes, that's so. "Loch Garve," off Molokai.

Q. Generally speaking, what part have you had to do in salvage operations of this kind, these vessels?

A. Well, in a couple of them I was mate of them at the time they went ashore. These Inter-Island boats. And the last four or five I was Superintendent of Inter-Island steamers at the salvage operations.

Q. Who was in charge for the Inter-Island Company? A. I was.

Q. On all of the occasions where the Inter-Island Steam [2976—2145] Navigation Company had to do with the operations?

A. Yes, in all them occasions.

Q. Can you name any one or more of those vessels which were stranded substantially as the "Celtic Chief" was, with conditions as nearly similar as you can give them?

A. The French barque off Diamond Head was ashore just about the same as the "Celtic Chief"; the "Chorusu Maru." That's the only two I can remember about the same as the "Celtic Chief."

Q. What is the business generally of the Inter-Island Steam Navigation Company?

A. General business?

(Testimony of J. F. Haglund.)

Q. What's its business?

A. Operating a line of coasting steamers carrying freight, passengers, and mail between the Islands, different Islands, and Honolulu.

Q. Referring, now, to the stranding of the "Celtic Chief," what time did you first go out there?

A. I went out there about five o'clock on Monday evening, December the sixth, if I remember right, 1909.

Q. And what did you do then?

A. I just went out in a launch with instructions to our steamers to remain there over night. That is the steamer "Mauna Kea" and the "Mikahala."

Q. Where did you go that night?

A. I went back to Honolulu again.

Q. Didn't go on board the "Celtic Chief" that night? A. I did not.

Q. Now, when next did you go out?

A. I went out on Tuesday morning; left the wharf at half-past six in the morning; went out there in the steamer "Helene" and took the "Mauna Kea's" place; sent the "Mauna Kea" in into the harbor as they had to go out that day [2977—2146] for Hilo on her regular schedule run, mail and passengers.

Q. What time of day?

A. That was seven o'clock.

Q. I mean what time was she scheduled to leave?

A. I don't remember exactly whether her schedule had been changed. As near as I can remember her schedule time was twelve o'clock. Since then it's changed to ten o'clock. I'm not altogether positive.

Q. And what had she to do before departing at ten o'clock?

(Testimony of J. F. Haglund.)

A. She was scheduled to sail at that hour with mail and passengers and freight.

Q. The line, you say, she, the "Helene," took her place early that morning?

A. Yes, about seven o'clock.

Q. Now, what had the "Mauna Kea" to do between then and twelve o'clock?

A. They had to go in and take all the freight aboard to start with. She had been out to the "Celtic Chief" the biggest part of Monday. She went out about ten o'clock, I think, if I remember right.

Q. Did you see the "Mauna Kea's" line break at all?

A. I did not. I know it was broken, though.

Q. Try to talk a little louder.

A. I say I didn't see it break, although I know it had been broken.

Q. How do you know that?

A. Because there was a good part of the line lost and after I go aboard the "Celtic Chief" I could then see that the line had been broken, because there was part of it aboard there.

Q. What vessels were out there Tuesday morning after the "Helene" took her place?

A. "Mikahala," the tug "Intrepid." [2978—2147]

Q. And the "Helene"? A. And the "Helene."

Q. What, if anything, was done by these three vessels during Tuesday?

A. Well, after we got the "Helene" moored, I went aboard the "Celtic Chief" to make arrangements to discharge some of her cargo into our steamers.

(Testimony of J. F. Haglund.)

Q. How was the "Helene" moored?

A. The "Helene" was—well, she was placed practically in the same place as the "Mauna Kea" had had on the "Celtic Chief," port quarter about a point, that is, to the westward.

Q. About a point to the port quarter?

A. Yes, two anchors.

Q. And do you know the length of her line, the distance between the "Helene" and the "Celtic Chief"?

A. Yes, I do.

Q. What is it?

A. Well, her distance between, after she was moored, her distance was six hundred and about six hundred and thirty-five feet.

Q. Will you tell us just how you know that?

A. Well, I measured the "Mauna Kea" line. There was six hundred feet left of it. There was one hundred and fifty feet lost. And then she had a bridle about thirty feet long.

Q. Where was that bridle?

A. From the "Helene" stern to the twelve-inch line; three parts of seven-inch line. And by the "Celtic Chief" the twelve-inch come between five and six feet outward of the "Celtic Chief's" stern. That makes it six hundred and thirty-five feet from stern to stern.

Q. When did you measure what was left of the "Mauna Kea's" line?

A. I measured it afterwards.

Q. Do you know how long that line was when it was taken [2979—2148] out?

A. Hundred and twenty-five fathoms.

(Testimony of J. F. Haglund.)

Q. And the size of that line?

A. Twelve-inch manilla.

Q. Now, how many anchors did the "Helene" have out? A. She had two anchors out.

Q. Just how much chain was there to those anchors?

A. Ninety fathoms of chain on the starboard anchor, and sixty fathoms on the port anchor.

Q. Now, in what direction were those anchors laid?

A. They were spread about, I should judge, between two and three points apart.

Q. Each?

A. No, between the two anchors. Probably about three points. I should judge the weight of the anchors about two thousand pounds each. Inch and a half chain.

Q. Do you know these things of your own knowledge? A. Yes, sir.

Q. Now, the "Mikahala." What was her bearing from the "Celtic Chief"?

A. The "Mikahala's" bearing from the "Celtic Chief," is two points on the "Celtic Chief's" starboard quarter.

Q. And what anchors did the "Mikahala" have out?

A. They had one anchor out and about thirty fathoms chain.

Q. And what position?

A. On her port bow; port anchor, port bow.

Q. How many points off the port bow?

A. When she towed in the direction I described, two points on the starboard quarter, her anchor was

(Testimony of J. F. Haglund.)

still about a point on her port bow; that would be her anchor-chain.

Q. What was the object of anchors out with the "Helene"?

Mr. OLSON.—Just a moment. I object on the ground [2980—2149] this is cumulative.

The COURT.—The objection is overruled.

(Question read.)

A. Well, the object of putting the "Helene's" anchors out in the manner they were put out—

Mr. OLSON.—Now, just a moment. I object on the ground that it is calling for a conclusion of the witness.

Mr. WARREN.—I withdraw the question. What object did those anchors serve as so placed?

Mr. OLSON.—I object to the question as calling for a conclusion of the witness.

I add to my objection, there is no qualification shown and no proper foundation laid.

The COURT.—It seems to me that even apart from the opinion feature of it, if there is going to be an opinion, the Captain must show his knowledge of the basic facts. I sustain the objection at this time.

Mr. WARREN.—Given a ship ashore, Captain, as the "Celtic Chief" was, and a steamer, such as the "Helene," intending to pull on the ship ashore both by propeller and by heaving on anchors, what is the best position and distance to place anchors of the pulling steamer for that purpose?

Mr. OLSON.—I object to the question on the ground that it doesn't state sufficient facts upon which material testimony can be given in this case,

(Testimony of J. F. Haglund.)

there being no statement as to depth of water and various other circumstances which would, necessarily, enter into that sort of situation before testimony can be given.

The COURT.—Objection overruled.

A. What is the question?

(Question read.)

A. Well, in this particular case was to get anchors [2981—2150] so nearly astern of the "Celtic Chief" and so far away as possible.

Q. What is the advantage of distance?

A. The greater the distance, of course, the better hold and more purchase you can put on before you drag home.

Q. Now, do you know what use, if any, was made of the "Helene" anchors and chains in these operations?

A. Well, they were hove taut, so taut as it possibly could be got.

Q. How?

A. Without engines steaming ahead and her power of the winches to heave the chains taut.

Q. And how long did the "Helene" do that?

A. Until it was as taut as she could possibly get it on Tuesday morning.

Q. And how long did she continue?

A. She continued towing on the vessel until we got her off on Wednesday night, and if there was any slack on the chain that was always hove in, but there was very little slack on the chain. Maybe a few links during that time. Her head like that and exactly as a mooring to keep that "Celtic Chief" from going farther on the reef.

(Testimony of J. F. Haglund.)

Q. Do you know what the position of those anchor lines, anchor-chains, was after the "Helene" got them taut the first time?

A. Well, between the two anchors, a point on the "Celtic Chief" port quarter.

Q. I mean with respect to the water.

A. Just as taut as they possibly could be made without breaking it.

Q. How do you know that?

A. Well, I could see it.

Q. Did you go on board the "Helene"?

A. Several times; yes. [2982—2151] I went aboard of her, went around her, looked at the chains forward, just as taut as they possibly could be hove and the line was just as taut as it possibly could be between the "Celtic Chief" and her.

Q. When did you go out in a boat? Did you say you went out in a boat?

A. I went out on Monday evening about five o'clock.

Q. I mean after that. Did you make any examination of the lines and anchor-chains of the different vessels? A. I did several times.

Q. Tell us how you did that.

A. One of the steamer boats from vessel to vessel, both astern of her and ahead of her; looked at everything, chains and hawsers; saw that everything was kept as taut as they possibly could be gotten without breaking.

Q. Do you know how the anchor of the "Mikahala" was used? A. Yes.

Q. Tell us.

(Testimony of J. F. Haglund.)

A. That was not used for the same purpose as the "Helene." That was up there on Monday; was got out just merely for to hold the steamer in position.

Q. Do you know the depth of the water where the "Helene's" anchors were, approximately?

A. I can't state the depth of the water where the anchors were, no, but the depth of the water where the steamer was lying was somewheres around five fathom.

Q. Now, the "Arcona." Did you see her come out? A. I did.

Q. Tell us what she did first on coming out?

A. She come out on Wednesday somewheres around eleven o'clock in the forenoon, I think it was, and she dropped her port anchor in a line, direct line with the line of [2983—2152] "Celtic Chief" astern.

Q. About how far out from the "Celtic Chief"?

A. Between—it's very hard to judge the distance exactly, but I should judge all of fifteen feet, anyway.

Q. And then what?

A. And then she run a line to the "Celtic Chief."

Q. What kind of a line?

A. Well, there was a manilla line, if I remember right. Either manilla or hemp, one of them, and with that they hove a small wire aboard, made that fast. It was lying at right angle, practically. When she was about to tow she was practically at right angle to the "Celtic Chief" at that time. And in starting to heave herself around both her capstan, winch, or whatever it was, and her propeller, trying to work

(Testimony of J. F. Haglund.)

herself around, she parted the wire and just a few minutes afterwards she had it fast.

Q. Then what happened?

A. *They* they hauled that in around and hove her anchor up and steamed away to the eastward.

Q. Where was the "Arcona" when she hove the anchor up?

A. She was in a line looking from the "Celtic Chief" about in the middle between the "Helene" and the "Mikahala," as near as I could judge, of course, the one being more the eastward. Of course, the vessel itself was closer down upon the "Helene."

Q. How near did she come to the "Helene"?

A. That I couldn't tell. I was aboard the "Celtic Chief."

Q. Approximately?

A. She was rather close to the "Helene" herself in position. That's the reason she hove her anchor up and moved over to windward.

Mr. OLSON.—Move to strike the last part of the answer as calling for a conclusion of the witness.
[2984—2153]

Mr. WARREN.—I ask leave to ask the witness how he knows.

The COURT.—I'll not strike it at this time. I'll allow the question.

Mr. OLSON.—The Court will reserve its ruling on the motion?

The COURT.—Yes.

Mr. WARREN.—How do you know that was the reason?

A. I could see that she couldn't possibly heave

(Testimony of J. F. Haglund.)

clear of the "Helene" and get into position. The winds and current to the westward, it was impossible. She would drag her anchor in further to the westward if she had not hove up her anchor and moved.

Q. What position would she have taken or how would she have moved under the conditions that you observed?

A. Well, she—where she dropped her anchor she would have been lying practically where the "Helene" was lying when the anchor was dragged at the time. She couldn't possibly go to windward of the "Helene" in the position that she wanted to be in.

Q. Then she took up her anchor, and where did she go?

A. She steamed up to eastward ahead of the "Mikahala."

Mr. OLSON.—Now, I ask for a ruling on my motion.

A. I know where she wanted to go to.

The COURT.—I shall have to grant the motion, Mr. Warren.

Q. Tell us as nearly as you can just where the "Arcona" dropped her anchor the second time, Captain, approximately how far ahead of the "Mikahala" and where with respect to the center line of the "Mikahala"?

A. Well, I can tell you in what line she dropped her anchor from the "Celtic Chief," but the distance from the "Mikahala" I couldn't very well state.

(Testimony of J. F. Haglund.)

Q. What was her line then? Imagine a line drawn from the stern of the "Celtic Chief" out to the "Mikahala" and extending beyond the "Mikahala," on which side of that line did she drop her anchor?

A. Right on that line.

Q. How do you know that?

A. The line from the "Celtic Chief" stern just cleared the "Mikahala's" starboard bow. I could see the anchor dropped.

Q. Where were you?

A. Aboard the "Celtic Chief."

Q. What part?

A. Right astern, about the middle of the ship astern.

Q. And what position did the "Arcona" then assume?

A. Well, paid out chain and I don't know how much, but she got then halfway down between the "Helene" and the "Mikahala" looking from the "Celtic Chief" clear on another line and hove on another wire aboard the "Celtic Chief."

Q. In that position where was she with respect to the "Celtic Chief"? What direction?

A. Well, the "Arcona's" stern then was practically right astern of the "Celtic Chief," in line with the "Celtic Chief."

Q. And then what was done?

A. They run a small wire aboard and then after that she tried to get a big wire aboard, but she didn't succeed in getting it aboard. It fouled on the bottom and she couldn't get it aboard.

Q. Tell us what you saw about that?

(Testimony of J. F. Haglund.)

A. Well, she tried to heave it aboard with a surf line without anything to keep the wire from sinking; no buoy, no boat, or anything, consequently she sunk on the bottom and dragged herself down.

Q. How many times did that happen? [2986—2155] A. Twice to my knowledge, anyway.

Q. How much time was consumed in this effort to run the big hawser aboard?

A. Well, I couldn't possibly state the time, but it must have been two or three hours, anyway, attempting to get that big hawser aboard.

Q. What, in your judgment, would have been a proper manner to have brought or conducted that operation to get that cable on board?

Mr. OLSON.—Object to the question on the ground it is immaterial.

The COURT.—The objection is overruled.

A. Well, the "Arcona" had a steam launch running the surf lines and, in my judgment, after they run the surf line if they had put the wire on the steam launch and put it on the "Celtic Chief," it could have been accomplished in less than five minutes.

Recess.

Q. After the "Arcona" gave up the attempt to get on the heavy hawser, Captain, what did she do?

A. She put on another small one.

Q. Tell how it was done, Captain.

A. Well, they run a surf line from the "Arcona" to the "Celtic Chief" and they bent on a small wire and hauled it aboard of the "Celtic Chief" and put that fast on the starboard side of the "Celtic Chief."

(Testimony of J. F. Haglund.)

Q. How many wires? A. One.

Q. What's that?

A. One. They already had one aboard before.

Q. Already had one? A. Yes.

Q. Oh, then this—

A. This was the second wire run aboard. [2987—
2156]

Q. Where was the wire, did the second wire come from? A. From the "Arcona."

Q. What's that? A. From the "Arcona."

Q. I mean which vessel? Was it an "Arcona" wire or "Celtic Chief" wire?

A. The first wire; that is, not the one that parted but the next one run after that, or half of it, was the "Celtic Chief" wire and the other half was the "Arcona's," was bent together about the center, so far as I could judge from the ship.

Q. Do you know the size of those wires?

A. One inch diameter, and three-inch circumference.

Q. About what time was it when the two "Arcona" wires were both connected?

A. Just about somewheres between six and seven o'clock, I think, in the evening. Nearer seven.

Q. What was done with them?

A. Nothing more. Just put on wires, the strain on them alike.

Q. How did they do that?

A. On the ship I suppose.

Q. How's that?

A. They done that on the "Arcona."

Q. How is the strain on two lines equalized?

(Testimony of J. F. Haglund.)

A. They were equalized as near as I could judge; they were both the same tautness, I think.

Q. Well, now, what was their position in respect to the water at six or seven o'clock that evening when they had been put in that position?

A. Oh, a big bight in the water. They struck the water at about a distance, I should think, forty or fifty feet from the different ships.

Q. Any difference between the distance at the "Celtic Chief" end and at the "Arcona" end?

A. Well, not noticeable, as far as I could remember. [2988—2157]

Q. Can you tell us approximately the length of the lines or, rather, the distance between the "Celtic Chief" and the "Arcona"?

A. Well, about as near as I can judge, about probably twenty-five feet further than the distance between the "Helene" and the "Celtic Chief."

Q. That would make it what?

A. Six hundred and thirty-five, and twenty-five; seventy.

Q. You said six hundred and twenty-five for the "Helene"?

A. Six hundred and thirty-five from the "Helene."

Q. That would make about six hundred and sixty for the "Arcona"? A. About that.

Q. What was the distance between the "Mikahala" and the "Celtic Chief"?

A. The "Mikahala" was a good deal nearer to the "Celtic Chief." I should judge approximately her length was one hundred and forty-seven nearer to the "Celtic Chief."

(Testimony of J. F. Haglund.)

Mr. OLSON.—How much?

A. About one hundred and forty-seven feet. The “Mikahala,” as near as I could observe, was about in line with the “Arcona’s” stern.

Q. How do you figure out the distance?

A. Going around the boat there I could tell the relation of one to the other. I know the “Helene’s” length because I measured that with a tape-line.

Q. Did you see the “Intrepid”? A. Yes.

Q. Just where was she lying when you went out there Tuesday morning?

A. Practically astern, right astern of the “Celtic Chief.”

Q. About what length of line?

A. Oh, a little shorter than the “Mikahala’s.”

Q. How much?

A. Nearly twenty or thirty feet shorter I should judge.

Q. Do you know what was done by the “Intrepid” on Tuesday? [2989—2158]

A. On Tuesday she was towing the whole day.

Q. What is that?

A. She was towing the whole Tuesday.

Q. And how on Wednesday?

A. On Wednesday she towed until late in the forenoon when she was cut adrift to let the “Arcona” in there. She desired that place and claimed there wasn’t room for her unless the “Intrepid” was taken away from there.

Q. How about during Tuesday night?

A. Tuesday night?

Q. Yes, from Tuesday night until Wednesday

(Testimony of J. F. Haglund.)

morning. A. She was there.

Q. The "Intrepid"? A. Yes.

Q. The same? A. Just the same.

Q. Did you observe the line of the "Intrepid" during that day; Tuesday, and up to the noon of Wednesday? A. Yes, sir.

Q. Tell us about that.

A. It was pretty taut. About as taut as I suppose you could get it with her power.

Q. Do you know the size of the line she had?

A. Well, I should judge it was about a ten-inch manilla hawser with a piece of wire spliced on to the end that led on board of the "Celtic Chief"

Q. I'd like to show you Libellants' Exhibit "L," being a photograph, and ask you if you can identify any of the lines there shown attached to the "Celtic Chief."

A. I can identify all of them. This is the "Helene's," the big line, the top one at the ship is the "Helene's."

Q. The heavier one? A. On the port stern.

Q. Now, the one just under that?

A. Underneath, that's the "Likelike" from the port [2990—2159] quarter pipe, right opposite the mizzenmast.

Q. Under the third line?

A. This is one of the "Arcona's" surf lines and this is the Miller Salvage Company's manilla hawser.

Mr. OLSON.—Underneath that? A. Yes.

Q. That's the fourth line from the top. Looking, now, at Libellants' Exhibit "I," can you identify the lines there shown, Captain?

(Testimony of J. F. Haglund.)

A. Yes. This is the "Helene's."

Q. The top one?

A. The top one is the "Helene's."

Q. The next?

A. This is the "Intrepid's" and this is the "Mikahala's."

Mr. WARREN.—Passing near the boat.

The WITNESS.—That's the "Helene's" boat by the "Mikahala" line.

Q. Libellants' Exhibit "K." What lines are there shown, Captain?

A. The top one is the "Helene's," the next one is the "Intrepid's."

Q. "Mikahala" coming from the center?

A. "Mikahala's" line from the starboard quarter chock.

Q. I now show you Libellants' Exhibit "J," that being the "Mauna Kea." Now, I'll ask you if you know approximately the length of the line shown on this picture from the stern of the "Mauna Kea" to the edge of the picture at the right, approximately how many feet of line in view?

A. Approximately in the neighborhood of four hundred feet, I should judge, by that picture. The "Helene," over two hundred feet long.

Q. How much over two hundred feet? [2991—2160]

A. Thirty-nine and a fraction.

Q. Now, looking again at Libelants' Exhibit "L," I'll ask you how much line, approximately, is there shown of the "Mauna Kea"—I mean the "Helene."

Mr. OLSON.—I object, if the Court please, on the

(Testimony of J. F. Haglund.)

ground that the witness has no basis to proceed.

Q. Can you, in looking at that picture, Captain, estimate the distance of the line there shown?

A. Well, not correctly. I can form a pretty good judgment of it.

Q. What is it?

A. By this picture, oh, I should judge about two hundred to two hundred and fifty feet.

Q. And the "Likelike" line?

A. The "Likelike" line shows a little bit longer.

Q. How many lines did the "Mikahala" have?

A. She had two eight-inch manilla hawsers. That is, on Wednesday.

Q. What time was that line put on on Wednesday; the second one.

A. The second line was run out, as near as I can remember, about seven or shortly after seven o'clock in the morning, if I remember right.

Q. Now, what approximately was the distance between the "Helene" and the "Mikahala" in their distance that you have testified to?

A. Oh, about five hundred feet, I should judge.

Q. Now, when did the "Likelike" come out?

A. She came out on Wednesday, about half-past 11 A. M.

Q. And what position did she take?

A. A little to the westward of the other steamer "Helene" on the "Celtic Chief's" port quarter.

Q. About how far from the "Helene"? [2992—2161]

A. Well, after she was in towing position, I should

(Testimony of J. F. Haglund.)

judge about a hundred feet or little more, perhaps.

Q. And what was the distance between the "Like-like" and the "Celtic Chief"?

A. Well, it's a little closer than the "Helene." About, I should judge, about six hundred and seventy-five and eighty, about.

Q. You say closer than the "Helene"? A. Yes.

Q. And you gave us six hundred and thirty-five for the "Helene." I'm asking for the distance between the "Celtic Chief" and the "Helene."

A. I said five hundred and seventy-five and five hundred and eighty.

Q. Do you know the depth of water around the "Celtic Chief"?

A. Well, I saw it sounded there. I didn't sound myself, I saw Captain—

Q. Did you see the soundings?

A. I saw the soundings, but I didn't sound myself, I say.

Mr. OLSON.—Then, I submit, if the Court please, the witness can't testify.

Mr. WARREN.—What did you see in the way of soundings?

A. Nineteen feet.

Mr. OLSON.—I submit that the witness' answer must be stricken on the ground it is not responsive.

A. I saw the mark on the lead line.

Q. What did you see, Captain?

A. I saw the lead thrown aft and the line was marked off and I can see from the "Celtic Chief" just the same as the man what heaved the lead what depth we were, although I didn't have the lead in my

(Testimony of J. F. Haglund.)

hand, but I saw the depth by the mark on the lead.

Q. And that was what?

A. Nineteen feet. [2993—2162]

Q. That was aft. What about forward?

A. I didn't see it sounded forward, sir.

Q. Do you know what kind of a bottom it was there?

A. I couldn't positively say out there. There was more or less coral because I saw the water discolored. There was a milky color and judging from that there must have been more or less coral.

Q. What is there about coral that makes the water white?

A. The motion of the ship grinding it up discolours the water.

Q. Referring again to the "Arcona" lines, as you saw them made fast between six and seven o'clock on Wednesday night and the position in which you have described, do you know whether or not there was any change in the position of those lines after that night?

A. No, not up to the time that the ship was floated off there was no visible change to me.

Q. How often did you observe them?

A. Well, shortly before eleven o'clock I was in the boat and around the "Arcona"; saw her chain and saw her lines, and after I got aboard the ship, somewhere around eleven o'clock, then the search-light was on which made everything pretty plain, you could see from the "Celtic Chief" whether there was any change or not. I couldn't see none.

Q. How near did you come to the "Arcona's"

(Testimony of J. F. Haglund.)

anchor-chain when you went out that night in the boat?

A. I was right up against the "Arcona's" stern with the boat and possibly within two or three feet of her anchor chain. It was hanging perpendicular altogether at that time. [2994—2163]

Q. On which side?

A. On the port side.

Q. Did you test it in any way, touch it?

A. No, I didn't put my foot on it; put my hand on the stem.

Q. And how near did you come in the boat to the stern lines of the "Celtic Chief"?

A. Oh, probably within from twenty to thirty feet away from the stern where I passed by there in the boat.

Q. If the lines of the "Arcona," or either of them, had been made taut that night, would you have known it? A. Yes, certainly would.

Q. Do you know whether or not the "Arcona" heaved on her anchor chain any time that night?

A. She did not.

Q. How do you know that?

A. Well, part of the evening I was aboard of her.

Q. You were aboard of her? What part of the evening?

A. Well, I got aboard there little before ten o'clock and I left her shortly after.

Q. Well, as to other times, if she had heaved on her anchor chain at any time that night, would you have known it?

A. Yes, I would. It would have altered her position.

(Testimony of J. F. Haglund.)

Q. How altered her position?

A. Well, her anchor being way off to windward, in fact, to the east of the "Mikahala," if anything, the whole part of the chain, it certainly would have brought the "Arcona" closer up against the "Mikahala."

Q. Do you know whether or not the "Arcona" changed her position at any time after six o'clock that night and before the ship came off?

A. She did not.

Q. Could she have changed her position without your knowing it?

A. No, she could not have changed her position without my knowing it because I [2995—2164] was there all the time.

Q. Do you know whether or not the "Arcona" used her propeller any time that night?

A. She did not use her propeller.

Q. Could she have used it without your knowing it?

A. If she had used her propellers she would have tightened up the wires, which she didn't do.

Q. Were you able to see those wires after dark Wednesday night?

A. Six, seven or eight o'clock, whenever it became dark and before the search-light came on? Well, from the "Celtic Chief," you mean?

Q. From anywhere that you were.

A. I could see them because I was out in the boat and close by them. I could see them from the "Arcona" when I was aboard of her, and I could see the "Celtic Chief" end when I was aboard the "Celtic Chief."

(Testimony of J. F. Haglund.)

Q. How long were you out in the boat among the vessels that night?

A. Well, so near as I can remember, I must have been absent from the "Celtic Chief" about two hours, approximately. I couldn't state exactly. Maybe two hours and a half.

Q. What time did you get back to the "Celtic Chief"?

A. About eleven o'clock, so near as I can remember. I don't know exactly to the minute. Approximately eleven o'clock.

Q. What time did the search-light come on?

A. Just about that time.

Q. Before or after you were actually on board the "Celtic Chief"?

A. Thrown on a little before I got on board of her. I was about halfway between the "Arcona" and the "Celtic Chief," before it was thrown on.

Q. What was the occasion of your going on board the [2996—2165] "Arcona"?

A. Well, we had made arrangements, that is, Captain McCauley, Captain Henry, and myself, that when the "Celtic Chief" was floated that the steamer "Mikahala" was to take care of her, and on Wednesday evening Captain McCauley informed me that the executive officer of the "Arcona" had been on board the "Celtic Chief." Whether he heard of our arrangement or not, of course, I don't know and it was changed unbeknown to me that the "Arcona" was to take care of the ship instead of the "Mikahala" and that's what brought me on board the "Arcona" to *confirm* with the executive officer.

(Testimony of J. F. Haglund.)

Q. Whom did you see?

A. The executive officer.

Q. Where did you go?

A. I went all over the quarter-deck then I went down the executive officer's room, amidships on her port's side.

Q. What were the arrangements as to signals prior to that time?

A. Prior to that time, we haven't had any signals after the two red lamps what we use to put up in the mizzen rigging of the "Celtic Chief."

Q. And what arrangements as to what vessel was to take care of the ship in the event of her coming off?

Mr. OLSEN.—I object to the question on the ground it was asked and answered.

Mr. WARREN.—Prior to that time.

A. The "Mikahala"—

Mr. OLSEN.—Just a second.

Mr. WARREN.—Where were you when the programme was changed?

A. I don't know. I may have been on the "Celtic Chief," [2997—2166] but I didn't know about it until Captain Macaulay told me of it late in the evening.

Q. Then what arrangement was then made as to what vessel should take off this ship?

A. The "Arcona" was to take care of the ship after she was afloat.

Q. How do you know that?

A. Well, the executive officer told me that after he come on board.

(Testimony of J. F. Haglund.)

Q. Tell us the conversation between yourself and the executive officer.

A. He expressed a very strong desire for to delay operations until one to daylight. "We could see what we were doing," he said. I told him we couldn't do that. We had to try to take the ship off at the first opportunity that was at high water which will be after midnight that night, so he said he was in no position to tow because he knew that he would break his small wires that he had out, and furthermore, that he didn't like to cut them.

Mr. OLSEN.—What?

A. He didn't like to cut them and he was afraid if he start the engine and break them, as he was pretty sure he would, that he would get them tangled in his twin-screws, so that arrangement for the signals to be given as I got here.

Q. What is that paper that you have?

A. This is the paper that the executive officer of the cruiser "Arcona" wrote that evening about the signals to avoid any confusion or anything of that sort that may occur.

Q. Did you see him write this? [2998—2167]

A. Yes, sir, I was alongside of him in his room.

Q. Who arranged those signals?

A. Well, he did after a lot of alteration. He made a big list, took us a couple of nights to get through with so it was reduced to this. One green star to be shot out of the pistol signified the ship was moving.

Mr. OLSEN.—I think the memorandum will speak for itself, if the Court please.

(Testimony of J. F. Haglund.)

Q. Did you remember the signals, Captain, independently of the paper? A. I certainly do.

Q. Will you tell us what they were independently of this paper? A. One green star was to—

Mr. OLSEN.—Now, if the Court please, the memorandum is the best evidence and I object to the testimony on that grounds.

The WITNESS.—Captain Nelson and Captain Tullock got a copy of them same signals now, so far as I know.

Mr. OLSEN.—Move to strike the last answer on the ground it was not responsive and it is immaterial.

The COURT.—Motion granted.

The WITNESS.—Them red signals was not fired, wasn't to be fired.

Mr. OLSEN.—I move to strike on the ground it is not responsive.

Mr. WARREN.—I asked the motion be granted, your Honor.

The COURT.—Motion will be granted.

Q. Now, Captain, will you go on and tell us what you know of your own knowledge about the green light signals that were arranged between you and the executive officer that night? [2999—2168]

A. A green star was to signify that the "Celtic Chief" was starting to move, and two green stars was to be fired when we thought that she was to be afloat, and the red signals there wasn't to take any note, signified the same as the red lamp that we had in the mizzen rigging, when to go slow and to go full speed on the engine. And then there was some

(Testimony of J. F. Haglund.)

private signals for the "Arcona" only. There were supposed to be white stars.

Q. Apart from the green signals, Captain, do you know of any other signals that were arranged that night between you and the executive officer?

A. Them red ones, you referring to, Mr. Warren?

Q. Handing you now this paper that you have produced, I'll ask you what these red signals are.

Mr. OLSEN.—He's already testified what the signals are. I object to the testimony unless it appears that the document itself is put in evidence.

Mr. WARREN.—I'll put the document in evidence; don't worry about that.

Mr. OLSEN.—Then I'll object to any testimony before it is in evidence.

I'll add to the objection that the document will speak for itself and is the best evidence.

Mr. WARREN.—I offer this document in evidence.

(Libellants' Exhibit "N," Testimony of Captain Haglund.)

Mr. WARREN.—Referring, first, to your testimony of a moment ago that there were red signals arranged, I hand you now this paper you have produced and which has just been received in evidence and ask what the red signals would indicate.

A. One red signal was to go slowly; that's the towing [3000—2169] steamer.

Q. Those are the same signals that you have testified to? A. Yes.

Q. Same red ones? A. Same red ones.

Q. Now, on this document it reads, "White stars

(Testimony of J. F. Haglund.)

are only for the use of H. T. M. 'Arcona'." Do you know what the white signals meant? What they were, and what they meant?

A. Yes, I know what they meant but not at the time they were written. I didn't know it.

Q. Not at the time they were written? A. No.

Q. When did you come to know it and how?

A. After the "Celtic Chief" was floated off the reef, the "Likelike's" line was cut first and the "Helene" as quickly after as possible, approximately the same time, you may call it, and the "Mikahala" line was not cut. She was to sheer her over to the westward of the "Arcona" and in approaching the "Arcona" pretty closely I went up to the executive officer who was standing by the skylight, and told him, "Ain't you going to start your engines, anything happen to 'Mikahala' hawsers, there might something happen?" He, said "I just give the signals to start in." He fired three white stars. That's how I found out what them white stars were for.

Q. Do you know, whether or not, the green signals were given?

A. Yes, they were given, but they was pretty well mixed up.

Q. Who gave the signals?

A. One of "Arcona's" men, one of the sailors, I presume it [3001—2170] was.

Q. Where?

A. On board of the "Celtic Chief" on top of the after-house, pilot-house.

Q. Do you know under whose direction that man was?

(Testimony of J. F. Haglund.)

A. The executive officer's. He was standing by the skylight there and giving him orders when to fire the signals.

Q. Did you have anything to do with the giving of the signals yourself? A. I did not.

Q. When did the "Celtic Chief" first begin moving seaward?

A. Somewheres around a quarter of twelve o'clock Wednesday night.

Q. Where were you?

A. Aboard the "Celtic Chief."

Q. Had she moved, if she had moved prior to that time, would you have known it?

A. Yes, I would have known it.

Q. Did you have any bearing?

A. I had bearing on shore lights being there, two lights. I could tell somewhat the lights that I had.

Q. Did you take any bearing Wednesday night after eleven o'clock after you got back?

A. That's one of the first things I did to look at some of the light ranges.

Q. At that time, did you notice any change in position? A. No, no change at all.

Q. And when she first moved about quarter of twelve, how did she move?

A. She started to move very, very slow; could feel her grinding on the bottom and vibrating very [3002—2171] heavily as the big swells come in and lift her, you see, and felt her, more buoyancy on the ship; and also before the lightering.

Q. Between say quarter of twelve and twelve, about how far did she move?

(Testimony of J. F. Haglund.)

A. I couldn't very well tell the distance, but she moved very, very little bit, just a little, few feet, I think.

Q. About what time was it that she came actually free off the reef?

A. By my watch, it was twenty minutes past twelve o'clock; that's Thursday morning.

Q. Now, in what direction did she then move on coming free from the reef?

A. Well, until the "Helene" and the "Likelike's" line was cut, of course, she went right dead astern, but after them two steamers were cut away, of course, "Mikahala" sheered her over further to eastward towards Diamond Head side.

Q. Were the lines of the "Helene" and "Likelike" cut before or after she was actually free off the reef?

A. There was none of them before she was free off the reef, that is so far as I know.

Q. How long after she was free?

A. I never felt her bumping after that.

Q. About how long after she was free of the reef, did you cut the lines of the "Helene" and "Likelike"? A. Immediately.

Q. What?

A. Immediately after she was floated. I had men stationed there with axes, you see, before she was afloat ready to cut as soon as I give orders when the ship was free. [3003—2172]

Q. And how much time after that before the "Mikahala" line was cut?

A. It's very hard to judge the time, but I should judge maybe five minutes. Of course, I couldn't to

(Testimony of J. F. Haglund.)

a minute, but I should judge in the neighborhood of five minutes.

Q. What was the nearest distance that the "Celtic Chief" approached the "Arcona" in coming off?

A. Well, distances are kind of hard to judge at sea at night-time especially; to my best judgment, maybe thirty or forty feet, maybe little less. I could hardly tell within a few feet, but she was pretty close to her.

Q. Now, when she was that distance from the "Celtic Chief," approximately what were their relative positions, the way they were heading with respect to each other?

A. The "Celtic Chief" was on "Arcona's" port quarter and the direction of it then, I should judge, was about parallel with the "Arcona," the way she was lying.

Q. What were, what direction did the "*Mikahala*" just after the ship came off, and before her line was cut?

A. The "*Mikahala*," she pulled to the port with a wheel hard astarboard as soon as she saw her pulled off, and by the time that the "Celtic Chief" was close up to the "Arcona." The "*Mikahala*" was forward of the "Celtic Chief" beam a point, I should judge, and to sheer her and also to stop her headway, sternway, as much as possible, that was her object in going over that way. That was agreed upon between myself and the executive officer, because he was kind of timid about his twin-screws and his two wires so I agreed with him that the "*Mikahala*" will be the boat that won't be cut [3004—2173] away until the

(Testimony of J. F. Haglund.)

"Arcona" was safely clear which was carried out.

Q. When did the "Arcona" first get under way or do anything that night?

A. Well, at the time that the "Celtic Chief" approached her, you see, we closed as I have been stating, then she started her engines and went ahead.

Q. Do you *whether* she hove on her anchor chains at all before that? A. No, apparently not.

Mr. OLSEN.—What is that?

A. Apparently not; I didn't hear her moving until she was clear off and then the "Mikahala" was cut away, and she towed the ship to sea.

Q. Where were you while the ship was going through the water stern first, after leaving the reef?

A. I was on the poop, on the quarterdeck, on the poop.

Q. Did you hear any conversation at that time between the officers of the "Arcona" and Captain Henry, or Captain Pilot Macaulay?

A. Well, I didn't hear it very good; I was on the "Celtic Chief" port side, and Captain Macaulay and Henry and the executive officer were at that time over on her starboard side, so I couldn't very well hear what they talked about, until later he come and told me.

Q. Otherwise, you don't know?

A. I don't know.

Q. Did you see the lines of the "Arcona" from the time the "Celtic Chief" was coming off the reef after she began, say quarter of twelve?

A. No, not until she commenced towing on her.

Q. Why not?

(Testimony of J. F. Haglund.)

A. They were down the bottom, I guess. [3005—2174]

Mr. OLSEN.—Move to strike on the ground it is a guess of the witness by his own statement, therefore not evidence.

The COURT.—Motion granted.

Mr. WARREN.—That is, just the words, “on the bottom, I guess.”

Mr. OLSEN.—Yes, that’s all I want.

Q. You were standing, you say, on the poop deck?

A. I was on the poop deck, on the port side of the poop deck.

Q. If the “Arcona” line had been out of the water, would you have seen them?

Mr. OLSEN.—I object to it on the ground it is leading.

The COURT.—I’ll sustain the objection.

Q. Do you know whether or not, Captain, the lines of the “Arcona” were in or out of the water?

A. I know they were in the water.

Q. What’s that?

A. I know they were in the water.

Q. How do you know it? How do you know they were in the water?

A. Well, the “Celtic Chief” approached the “Arcona” within thirty or forty feet, whatever the distance may have been; she had been over six hundred feet away.

Q. I’m referring particularly to the time while the ship was coming off the reef, say between a quarter of twelve and twenty minutes past twelve.

A. They were slack, the same as they were; both

(Testimony of J. F. Haglund.)

slack in the water, probably about fifty feet from either end where they were fast.

Q. See both of them?

A. I saw both of them. The search-light was on them [3006—2175] and lights of the "Arcona," all kinds of light on her and you could see the two ends perfectly well.

Q. Now, after the "Mikahala's" line was cut, the "Arcona" started up. Describe what happened then.

A. Well, after she commenced towing—

Q. She, meaning the "Arcona"?

A. The "Arcona" started to tow tightening her wire up, her port wire; the wire was fast to the port side of the "Celtic Chief." I don't know what became of the other, she must have parted it. I don't know, but the starboard wire was spliced in by the quarter chock where the "Mikahala's" line was fast to that bit.

Q. What parted?

A. That splicing line were parted and for a minute we thought the whole mizzen-top was coming down; it swung out and then the towline ahead waved midships were cantered. The "Celtic Chief" approached to the "Arcona," then we hailed the "Arcona" to let go the wires; he won't tow any more on that one wire.

Q. How far did the "Arcona" tow the "Celtic Chief" that way?

A. After the splicing line parted, she didn't tow very far, just a matter of a few feet.

Q. And how far out to sea did they go?

(Testimony of J. F. Haglund.)

A. She may have towed her out altogether, perhaps in the neighborhood of a mile, I should judge. Of course, it was very hard to tell correctly, but I should judge that distance.

Q. And then what was done?

A. Then the "Arcona's" lines were let go and the "Likelike" put a hawser aboard of the "Celtic Chief" again, and towed her up to the anchorage off the harbor. [3007—2176]

Q. Well, now, about how far from the anchorage off the harbor was the spot to which the "Celtic Chief" had been towed and left by the "Arcona"?

A. From the harbor to where she was left?

Q. Yes, how far to the anchorage?

A. Oh, may be a little over a mile, I couldn't tell you that very correctly.

Q. Do you know what the depth of the water was?

A. Because I didn't look at the compass to tell what direction the "Arcona" was towing the "Celtic Chief," whether we were going south or southeast, but I think in the neighborhood of south. That would give the distance probably more than a mile. It is very hard for me to tell correctly.

Q. And about how deep was the water out there where the "Arsona" left the "Celtic Chief"?

A. That I couldn't tell you.

Q. Well, you have an idea, haven't you?

A. Yes, I have an idea.

Q. Would it have been possibly to have anchored the "Celtic Chief" out there?

A. Well, oh, it may have been possible to get an anchor there, still I should judge there was a pretty

(Testimony of J. F. Haglund.)

good depth of water there, how much, of course, I couldn't state.

Q. How did it come that the "Likelike" undertook the towing of the "Celtic Chief" back to the anchorage?

A. Well, before the "Arcona" was let go, Captain Macaulay came to me and asked me to—

Mr. OLSEN.—Just a moment. I object to any conversation between Captain Macaulay and Captain Haglund on the ground it is hearsay. [3008—2177]

Q. Do you know where Captain Henry was?

A. He was talking with the executive officer of the "Arcona,"—he was still aboard,—about whether to let go that wire or not.

The COURT.—I am inclined to sustain the motion. I so rule.

Q. Did you have any understanding with Captain Henry as to the "Likelike" taking hold?

Mr. OLSON.—Object to the question on the ground it is calling for a conclusion of the witness.

The COURT.—Objection overruled.

A. I did.

Q. What was said between you and Captain Henry in that regard?

A. He asked me if I would give him a steamer, as they had to let go; the "Arcona" demanded her wire let go from the "Celtic Chief." I told him, yes, after the "Arcona" wire was gone I'd give him a steamer. The "Likelike" happened to be close by the "Celtic Chief" at the time, on the port side, and I hailed the "Likelike" and told the captain to get a wire and fix his towline again. It was done, and we towed her off the harbor.

(Testimony of J. F. Haglund.)

Q. Do you know what vessel furnished the first wire line that was run between the "Arcona" and the "Celtic Chief"? A. The "Arcona."

Q. Do you know whether or not advice was given at any time by the captain or executive officer of the "Arcona" to Captain Henry respecting the salvage operation?

A. Well, the captain of the "Arcona" and his executive officer came aboard the "Celtic Chief" together on Tuesday.

Q. You were there?

A. I was there. And he offered a suggestion then that to put the towline [3009—2178] on forward and try to slue the ship around, try to get her off that way. That was one of the suggestions I heard him make.

Q. Had that been done, captain, would that, in your judgment, have been a proper manoeuver or seamanlike operation under all the circumstances?

A. It certainly would not have been.

Q. Why not?

A. That would be about as dangerous an operation as you could have gotten into to slue her broadside on the reef. We were trying to avoid that all the time, towing her stern to keep her from going broadside.

Q. Any other suggestions that you know of that were offered by the officers of the "Arcona"?

A. None that I can remember.

Q. Do you know what time the second red lantern was sent up into the rigging of the "Celtic Chief"?

A. Well, so near as I can remember, it was somewhere around eleven o'clock. I couldn't possibly state to the minute.

(Testimony of J. F. Haglund.)

Q. How often, during the evening, and until the ship came off, did you observe the lines of the "Like-like," "Helene," and "Mikahala"?

A. Well, practically all the time, evening. When I was in the boat I observed the lines; when I was on our steamers I observed the lines; when I was on the "Celtic Chief." Practically all the time.

Q. Do you know whether or not the white lights that were special signals for the "Arcona" were sent up? A. What was that?

Q. The white lights that were the special signals for the "Arcona."

Mr. OLSON.—Object to it on the ground it has already [3010—2179] been answered by the witness.

The COURT.—I think that was all covered.

Mr. WARREN.—I won't press the question.

Q. Now, Captain, do you know where the Miller anchor was laid? A. I do.

Q. What's the first thing you knew about that anchor out there?

A. Well, the first thing I knew about it was on Tuesday evening.

Q. Tell us about it.

A. The steamer "Mokolii" towed the "James Makee" out, anchored her to the westward of the "Celtic Chief," and then the "Mokolii" come very close by the "Celtic Chief" and hove a heaving line aboard which was not made fast.

Mr. OLSON.—What?

A. It wasn't made fast, I say, and finally fell overboard again. That's all that was done to the—

(Testimony of J. F. Haglund.)

Q. I'm asking about the anchor.

A. Well, the anchor must have been on board the "James Makee," anyhow, supposed to have been on board the "James Makee." Of course, I didn't know that at that time.

Q. You didn't see the anchor that night?

A. I did not, it was after dark.

Q. About what time was it?

A. Well, I should judge about the time I couldn't very well state correct, but I should judge after seven o'clock, because it was dark.

Q. Well, on Wednesday morning?

A. On Wednesday morning Captain Miller came on board and wanted to bring on a line from that anchor which had been dropped on the port quarter of the "Celtic Chief," but Captain Macaulay or Captain Henry, he won't listen to getting a line from that anchor in the direction [3011—2180] that that anchor was placed. Captain Henry would not listen to getting a line from the anchor the way it was there. That's the man he was speaking to. I overheard the conversation.

Q. Tell us just where the anchor was placed.

A. So near as I can judge, must have been in the neighborhood of about four points on her quarter.

Q. And about how far out?

A. A distance, I should judge, about four or five hundred feet, so near as I can judge.

Q. Do you know what the depth of the water was there? A. I did not.

Q. Any idea?

A. Yes, I got an idea that it must have been, ac-

(Testimony of J. F. Haglund.)

According to the water around there, must have been less than four fathom.

Q. Now, go on and tell us about operations about the anchor.

A. Well, as Captain Henry told Captain Miller at the time, he won't take a line from the anchor lying in that direction, Captain Miller asked him if he placed it somewhere else he would take a line. He said, "Yes, if you'll put it out astern, I'll take a line from you," which was done. Captain Miller went aboard the "Makee" and the "Mokolii" took the "Makee" around the "Helene's" bow and put her in ahead of the "Intrepid" and then they run a line on board of the "Celtic Chief" and they hauled her in there and the anchor was dropped about as near astern as it possibly could be laid.

Q. How do you mean near?

A. Right astern. Directly astern.

Q. And about how far out?

A. Well, that anchor was laid about, as near as I can remember, about six, nearly seven hundred feet from the "Celtic Chief"; little less [3012—2181] than seven hundred feet because after the "Arcona" got in position later during the day, Captain Miller's anchor bow was on her starboard quarter probably twenty or thirty feet ahead of her stern.

Q. After you came back on board the "Celtic Chief" Wednesday night, did you observe the Miller anchor line over the stern? A. Yes, I did.

Q. What was its condition with respect to the water; that is, the wire you saw there?

A. The wire was up out of the water then. Pre-

(Testimony of J. F. Haglund.)

vious to that when we left the ship in the evening, the manilla hawser was still in the water, but coming back to the "Celtic Chief" at eleven o'clock the wire was up.

Q. How far up?

A. Well, that I couldn't tell you, how far inboard it was.

Q. Well, about how far from the stern of the "Celtic Chief"?

A. Lying right aboard of the ship.

Q. You say the wire had come up out of the water after eleven o'clock?

A. Come out of the water, yes.

Q. Now, how near was the end of the wire from the ship about eleven o'clock?

A. Well, I don't,—maybe seventy-five or a hundred feet maybe. Very hard to judge the distance exactly you see, but I don't think it was more than a hundred feet from the ship where it struck the water.

Q. Well, what was the position of the Miller line at that time?

A. Well, it wasn't so taut as it might have been at that time, eleven o'clock.

Q. What do you mean by that?

A. Well, it seemed to be a kind of sagging; it wasn't straight; not so much as it should have been had there been heavy strain on it. [3013—2182]

Q. How much of the line altogether out of the water at the stern, taking the manilla hawser and the wire, how much altogether of the Miller line at the stern?

(Testimony of J. F. Haglund.)

A. The manilla line was in board, I guess, because I didn't see it.

Mr. WARREN.—Withdraw that. About how many feet was it from the stern of the "Celtic Chief" where the Miller line went over and the point in the water where his line entered the water?

A. Well, I stated that, so near as I could judge, it was about a hundred feet.

Q. Well, if that was about a hundred feet, how much of that hundred feet was wire and how much manilla hawser?

A. I didn't notice the manilla hawser at all. It may have been close by the chock, but I won't swear to that, but from the water's edge way up there was wire only.

Q. Do you know the depth of the water where the Miller anchor was laid?

A. Yes, there's approximately five fathom of water.

Q. And do you know how high the stern of the "Celtic Chief" was out of the water?

A. Well, I never measured it exactly, but I should judge in the neighborhood of twenty feet; twenty feet, maybe little more.

Q. Where, in your judgment, would the Miller line have appeared out of the water if it had been taut?

Mr. OLSON.—Just a moment. I object to the question on the ground it is calling for a conclusion of the witness on a point it is unnecessary to have any opinion.

(Testimony of J. F. Haglund.)

Mr. WARREN.—Do you know the size of the Miller wire?

A. Well, I've seen it on several occasions. My judgment would be, to my best memory, about a six-inch line, I think. That is, circumference, as near as I can remember. [3014—2183]

Mr. OLSON.—That doesn't help us any for the simple reason that it doesn't determine its weight.

Mr. WARREN.—The manilla hawser, about how big was that?

A. Oh, the manilla hawser, well, it may be a ten-inch line.

Q. Now, this question being directed to the time you say you didn't see the hawser but you saw the wire up probably near the chock, assuming that Miller's line consisted of a wire of the size that you have testified to, and, in view of your knowledge of the depth of water where the anchor was laid, the height of the stern of the "Celtic Chief" out of the water, how much sag would you say there would be in that wire when taut?

Mr. OLSON.—Object to the question on the ground it doesn't appear that the witness is qualified to answer.

Mr. OLSON.—Captain Haglund, do you know the weight of a wire line six inches in circumference and the length of the one that Captain Miller had in use there?

A. No, I don't know the length of the wire other than I heard testified in court here.

Q. Do you know of your own knowledge?

A. I do not.

(Testimony of J. F. Haglund.)

Q. Do you know its weight?

A. How can I? I don't know the length or anything else. I was just guessing at the size of it.

Q. Now then, do you know, have you ever tested a line, a wire line attached to an object, to an anchor at one end and a solid object at the other, to see where or how much of the line would be in the water and how much out. Have you tested that and made measurements?

A. No, I don't know as I have with a wire line. I've seen it with ropes often enough.

Q. You know that a manilla rope will float to a certain [3015—2184] extent?

A. That all depends on whether the rope is old or new. An old rope will sink before a new.

Q. A new one won't sink as soon as an old one?

A. Certainly not.

Q. You don't know how straight you could get a rope of that size without breaking it?

A. Not—about a breaking strain, you mean?

Q. Yes.

A. I know there would be certainly considerable sag in a wire of that size.

Q. But you have tested it?

A. I never tested it, no.

Mr. OLSON.—I submit that the witness is not qualified to answer.

The COURT.—Captain Haglund, upon what experience would you base any opinion as an expert that you might give here?

A. In this case there's the "Helene's" line.

Mr. OLSON.—What is that?

(Testimony of J. F. Haglund.)

A. In this particular case there's the "Helene's" line.

Q. The "Helene's" line is a manilla hawser?

A. That didn't make no difference when it's out of the water as far as bight. There is a certain comparison between a manilla hawser and a wire.

The COURT.—Unless you can qualify the witness further, Mr. Warren, I'll have to sustain the objection.

The objection is sustained.

Monday, October 30, 1911.

Mr. WARREN.—I don't remember, Captain, whether or not I asked you what time the "Arcona" broke her first wire? Can you tell us?

A. So near as I can remember, it was about noon on [3016—2185] Wednesday.

Q. What time was high tide on that day, if you know? A. Twelve-thirty.

Q. Do you know whether or not the anchor and chain of the "Mikahala" which were parted and lost Wednesday night has ever been recovered?

A. It has not.

Mr. OLSON.—It has not? A. No.

Mr. WARREN.—Do you know the weight of that anchor that was lost?

A. Sixteen hundred pounds, if I remember right; inch and a half chain.

Q. Inch and a half chain?

A. Inch and a quarter, chain, I mean to say.

Q. What has become of the hawsers that were used by the towing steamers of the Inter-Island Company? Take first the "Mauna Kea"?

(Testimony of J. F. Haglund.)

A. Well, I got part of them in the warehouse yet; about a half of it. I should judge a little more; and the other part been used up for fenders and mooring lines.

Mr. OLSON.—The other part has, you say?

A. Yes. Part of it was lost on the "Celtic Chief."

Mr. WARREN.—About how much of it was lost on the "Celtic Chief"?

A. Well, there was one hundred and fifty feet lost altogether, but a little part of that we got back, may be fifty feet of it or something like that, the rest of it was all lost.

Q. From your experience as a navigator and in connection with towing, can you tell us what the effect of towing upon a hawser is, such as was done at the "Celtic Chief"?

A. What effect it has upon the—

Q. Yes.

Mr. OLSON.—Now, just a moment. I object unless it is limited to some particular hawser. [3017—2186]

Mr. WARREN.—I'm speaking of the general effect of—

The COURT.—I will allow the question put as to general effect.

A. Well, after a strain like it was exerted out on the "Celtic Chief" on a hawser, it is practically useless for any other purpose other than mooring lines in port of Honolulu or for fenders, tying up ropes, or something like that.

Mr. OLSON.—Now then, I move to strike, if the Court please, on the ground it is not responsive.

(Testimony of J. F. Haglund.)

The COURT.—I think it is responsive.

Mr. OLSON.—Then I move to strike on the ground that the answer is multiplicitous; that it calls for a conclusion of the witness without various conditions and facts; and that it is not limited on direct to one general thing.

Now, I move to strike furthermore on the ground that the witness is not qualified to answer in the way that he has answered.

The COURT.—Your objection is overruled.

Mr. WARREN.—I'd like to direct this question to the witness, your Honor. Does your answer to the last question, Captain, include ropes which have been subjected to a short pull?

Mr. OLSON.—Object to the question on the ground it is incompetent, irrelevant, and immaterial; furthermore on the ground that it's uncertain and is not properly limited.

Mr. WARREN.—Then I withdraw the question and I submit that I don't have to put any more on that line.

The COURT.—As long as it is possible for me to apply this answer without limiting it to long and short strains I believe the question and answer, or the question should [3018—2187] be formed in some way to avoid that to make it fair to defendant.

I don't think, Mr. Warren I should leave that question and answer in there when I could apply it in that way, although I wouldn't apply it that way. I don't take the question to mean any short pull at all. Captain Haglund, would you qualify your answer in any way according to the length or time

(Testimony of J. F. Haglund.)

within which pull was made or any other difference?

A. I testified and conditions as were out there or any other similar case, that they would ruin the lines practically for any other purpose than I have already stated.

Mr. OLSON.—Move to strike on the same grounds; witness not qualified to answer and multiplicitous.

The COURT.—I will not rule just now.

Q. Is this result that you have testified to true without any limitation or is it for some time or some condition, the same limit? Is there any degree or condition of strain under which this answer would not be applicable or would it apply in any case?

A. In any case under similar circumstances. I would state where a ship is towing on a fixed object in the seaway it often happens the full tensile strain on the rope may break, which was true in this particular case of the "Mauna Kea." It broke the twelve-inch hawser.

Mr. OLSON.—Move to strike on the ground that it doesn't appear what was the "Mauna Kea's" line. It must be hearsay.

The COURT.—You didn't observe that line?

A. Not at the time it broke. I observed it on the [3019—2188] afternoon it was broken and saw the piece the "Mauna Kea" was pulling.

The COURT.—The answer regarding the "Mauna Kea" may go out.

I don't feel that I can be fair to the defense and leave this question and answer so that I could apply it to any kind of a pull or any kind of duration of strain.

(Testimony of J. F. Haglund.)

Mr. WARREN.—I suggest your Honor ask such questions as may occur to you to bring that out, or I will do so in order to have that answer clear as to what is the kind and under what conditions that result will obtain.

The COURT.—The ruling, I didn't appreciate the point Mr. Olson made later and possibly would apply, or could apply it and possibly would apply although I don't know there is any testimony of any such pull.

Mr. OLSON.—Your Honor then reserves the ruling?

The COURT.—Yes, I'll reserve the ruling.

Mr. WARREN.—Referring to your answer state again, I'll ask you whether it makes any difference whether or not the line is subjected to a long pull or to a short pull. A. It certainly does.

Q. Tell us what difference and what degree of difference?

A. In a short pull you may part a line but still the yarns in the line will not be worn or strained as it will be in a continuous long pull.

Q. So that the rest of that line might be still good?

A. Still good.

Q. Can you tell us anything further about the difference in case the line is not broken?

A. Well, if it's not broken it is just the same. The [3020—2189] longer you tow on a line the more wear the line will have.

Q. Where does the wear come?

A. Right through the line. The yarns powder against one another; in some instances the manilla

(Testimony of J. F. Haglund.)

powders up and is worthless if such strain is put on, the continuous long strain.

Q. Now, in answering the previous question as to the general, as to the effect of pulling such as was done out there at the "Celtic Chief," does your answer relate to a long or a short pull?

A. Relates to a long pull.

Mr. WARREN.—Now I submit that your Honor's point has been made.

Mr. OLSON.—Now, I submit, if the Court please, that the witness has shown conclusively that the length of pull makes a vast difference as to what is to be the result upon the line.

Mr. WARREN.—What do you mean, Captain, by a long pull?

A. Such length of time as our Inter-Island steamers were towing on the "Celtic Chief." It was practically three days and two nights and a half, if I remember right. From Monday morning until Thursday morning.

Q. The "Helene" was two days?

A. The same line as the "Mauna Kea" had.

Q. The "Likelike" was one day. That makes any difference?

A. Well, the "Likelike's" line was not destroyed to a great extent as the "Mauna Kea's" at the same time useless for any other purpose.

Q. Any difference between the size of the lines and the size of the vessel pulling?

A. Certainly, yes.

Q. What that's? A. Yes. [3021—2190]

Q. What is it?

(Testimony of J. F. Haglund.)

A. A big powerful vessel, of course, will strain a line more so than a small vessel with less power on it.

Mr. WARREN.—I submit the answer is entitled to stay in the record, your Honor.

The COURT.—I will grant the motion to strike.

Mr. OLSON.—That motion includes that later answer.

The COURT.—All the later answers, supplemental.

Mr. WARREN.—I object to that, your Honor.

Q. Captain, what is the general effect upon towing lines?

The COURT.—Pardon me just a minute. Mr. Olson, you certainly have no objection to this later answer.

Mr. WARREN.—I'll make no point about that.

Q. When subjected to strain in towing, Captain?

A. A certain deterioration of the line.

Q. How is that caused?

A. By a strain put on it.

Q. What effect does it have on the line itself? What tendency?

A. Lessen the strength, the tensile strain of it, considerably.

Q. How?

A. By the strain that is put on it by towing.

Q. Do you know how it lessens strength, what is the effect on the rope itself to appearances or as to appearance?

A. I don't know as I can explain it with words, but I can bring up samples of the "Mauna Kea" line as it looks now after towing on the "Celtic Chief" and

(Testimony of J. F. Haglund.)

a similar new line—see the difference in it.

Q. What kind of a line did the "Mauna Kea" have when it began pulling? [3022—2191]

Mr. OLSON.—I object unless it appears that this witness does know.

Mr. WARREN.—Do you know?

A. She had a brand new twelve-inch manilla hawser.

Q. How do you know it?

A. Because I saw it. It came out of the warehouse to go on board of that steamer.

Q. Now, will you produce a sample of the same line? Can you? A. I can.

Q. After it was used in this operation?

A. Yes, sir, I can.

Q. Well, will you kindly do so? A. I will.

Q. Upon what does this deterioration depend? How is there any difference between a long and a short pull? A. Yes, there certainly is.

Q. What would you call a long pull?

A. Well, I would call a long pull in length of time from a half day up.

Q. Anything from a half a day up?

A. I should call a long pull, yes.

Q. Well, what is the difference between a long and short pull.

Mr. OLSON.—Just a moment. I object on the ground that the question does not state sufficient facts for the witness to answer; furthermore on the ground that the witness is not qualified to answer.

Mr. WARREN.—Withdraw the question. Why is there any difference between a long and a short pull?

(Testimony of J. F. Haglund.)

A. Well the longer the strain is upon the line, the more wears that the yarns is subjected to.

Q. Where does the wear come on a line subjected to strain? What parts of it? [3023—2192]

A. All parts of it, right through. All yarns. Continuous, long strain on it.

Q. Do you know the appearance of a line inside, opening up the strands, which has been subjected to a long, severe strain? A. I certainly do.

Q. How does it compare with the appearance of a new line of the same kind or character?

A. There is more or less of the manilla powdered up inside.

Q. What powders it? A. The strain on it.

Q. Is there any difference upon a hawser by reason of difference in the amount of strain put on it in a long pull?

A. I don't understand that question.

(Question read.)

Mr. WARREN.—Understand it?

A. I don't understand how to answer it.

Q. Then I withdraw it. Does the amount of strain exerted on a line affect its towing life?

A. Yes, it does.

Q. Do you know the horse-power of the "Mikahala"?

A. Her horse-power, indicated horse-power, is five hundred.

Q. How do you know that?

A. According to the ship's papers.

Q. How do you know that?

A. According to her enrollment.

(Testimony of J. F. Haglund.)

Q. Well, then, assuming, Captain, the power of the "Mikahala" to be five hundred horse-power, to be five hundred, and her line to be an eight-inch line, strained upon for half a day or more, can you tell us what would be the effect upon that line that power being exerted?

Mr. OLSON.—Is the question, can you tell, so it [3024—2193] calls for a yes or no answer?

Mr. WARREN.—What would be the effect?

Mr. OLSON.—Then I object to the question on the ground that it appears that the witness is not qualified to answer; furthermore, on the ground there is no foundation laid; furthermore, on the ground that the hypothetical question does not state all the material facts that are required in order that a proper answer can be given.

I add to the objection the further ground that it is uncertain because it states a half day or more.

Mr. WARREN.—I change that to be a half a day at least.

Mr. OLSON.—Then I object, if your Honor please, there is no testimony that the "Mikahala" ever transferred five hundred horse-power to those lines.

Mr. WARREN.—I'm willing to alter my question to make it four hundred and one instead of five hundred.

Mr. OLSON.—Still I would object.

The COURT.—I'll sustain the objection at this time.

Mr. WARREN.—Captain, did you see the line of the "Mikahala" after the operations at the "Celtic

(Testimony of J. F. Haglund.)

Chief"; both lines? A. I did.

Q. Do you know which was which, which one was used first and which second? There were two lines were there not? A. Yes, two lines.

Q. Were you able to tell by looking at them which was the line which was put on Monday and which was the line which was put on Wednesday?

A. I know the one being cut, that's all.

Q. You saw both of them, however? A. Yes.

Q. Now, what was their condition after that operation? [3025—2194]

Mr. OLSON.—I object to the question on the ground it doesn't appear that the witness is qualified to answer and it's calling for a conclusion of the witness. Before there is any answer to that question I wish to ask some questions as to qualifications.

Mr. WARREN.—Then the Court overrules my objection.

The COURT.—Yes.

Mr. OLSON.—Then I want to ask some questions.

Mr. WARREN.—I object to that.

Recess.

Mr. WARREN.—I'm willing to have that question as to its physical condition.

Mr. OLSON.—That doesn't alter the question at all, your Honor.

Mr. WARREN.—I withdraw my amendment to that question as to the word "physical" and leave it the other way.

Mr. OLSON.—Then I insist on my right to ask the witness as to his qualifications.

Mr. WARREN.—I think, with your Honor's per-

(Testimony of J. F. Haglund.)

mission, I withdraw that question at this time and put some preliminary questions and then put the question again.

The COURT.—Very well.

Q. What practical experience have you had, Captain, in the use and handling of lines of vessels?

A. Oh, I've had all kinds of experience all my life with the ships and ropes; been in the Inter-Island service now about twenty-seven years. I have been twenty-three years master of different steamers, as well as working as shore hand, seeing loads handled, machinery, and certain experience. I could judge a good rope from a bad one or a strained one from a new one. [3026—2195]

Q. As a practical matter is it possible to tell by a physical inspection of a towing hawser whether or not it is of a proper size and strength to be used for a given purpose?

Mr. OLSON.—Object to the question on the ground it doesn't appear that the witness is qualified to answer.

The COURT.—I will allow the question.

A. Yes, sir.

Q. How frequently have you been called upon in your experience to judge of lines having in mind the particular use to which the line is to be put?

A. How often?

Q. How frequently?

A. It happens pretty near every day in our present occupation.

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For the Ninth Circuit.

Apostles.

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vs.

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Said Steamers and Other Servants of Said Owners,
Appellee,

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vs.

MILLER SALVAGE COMPANY, LIMITED, a Corporation,
Appellee,
and

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MATSON NAVIGATION COMPANY, a California Corpora-
tion, Owner of the Tug "INTREPID," for Itself and the
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Upon Appeals from the United States District Court
for the Territory of Hawaii.

(Testimony of J. F. Haglund.)

Q. In practical seamanship can you tell whether or not a given rope or hawser is any longer fit for any given purpose? A. I can.

Q. How do you tell that?

A. By examining the rope.

Q. And what is there about a rope to indicate to you whether it is fit or unfit?

A. By looking at it and examining it not only on the outside but you have to open it and look on the inside. You can't always tell by the outside of the rope whether it is perfectly sound or strained, but by opening it you can judge whether they have been any excessive strain put on it or what strain you can put with safety.

Q. As a practical matter, is it possible to judge whether or not a line which has been used for towing could again be used under similar conditions?
[3027—2196]

Mr. OLSON.—I object to the question on the ground it is leading; also it's calling for a conclusion of the witness and the witness is not qualified to answer.

The COURT.—Repeat the question.

(Question read.)

Mr. OLSON.—Also on the ground it is immaterial.

The COURT.—I allow the question.

A. Yes, you can judge by examining it. If the rope may be used again under similar circumstances.

Q. You can tell?

A. You can tell by examining it.

Q. Do you know what kind of a line was used by the "Mikahala" beginning with Monday?

(Testimony of J. F. Haglund.)

A. It was an eight-inch manilla hawser.

Q. New or old? A. New.

Q. Did you see that same hawser after the operations at the "Celtic Chief"? A. I did.

Q. Do you examine it? A. I did.

Q. Could you tell by that examination whether or not that line was fit for towing purposes thereafter?

A. I could and I did.

Q. Was or was not that line fit for towing purposes?

Mr. OLSON.—Object to the question on the ground that the witness does not appear to be qualified to answer; furthermore, on the ground that no foundation has been laid.

The COURT.—Objection overruled.

Mr. OLSON.—I then ask privilege to ask the witness questions as to his qualifications.

Mr. WARREN.—I withdraw my objection as to cross-examination [3028—2197] as to qualifying questions.

The COURT.—I allow the questions.

Mr. OLSON.—Q. Captain Haglund, did you say that you examined the "Mikahala" rope after the operations?

A. I did.

Q. How long after the operations was it before you made that examination? A. On Thursday.

Q. That was the day after? A. The day after.

Q. Now, what line was it that you examined of the "Mikahala's"?

A. That is the line that went on on Monday morning.

(Testimony of J. F. Haglund.)

Q. Did you examine the other one? A. I did.

Q. How do you know which one it was that went out on Monday morning? A. It was cut.

Q. When was it cut? A. On Wednesday.

Q. Where? A. Aboard the "Mikahala."

Q. How do you know that that was the one that went out on Monday morning?

A. Because I was there and saw it.

Q. How do you know, merely from the fact it was cut that that was the one that went out on Monday morning? What time was that cut. Withdraw that question. A. Wednesday night.

Q. When was the second line put on?

A. Tuesday night.

Q. How can you tell from the fact it was cut on Wednesday [3029—2198] night that that was the line that was cut?

A. Because there was much more strain, there was more wear on that line than there was on the last one.

Q. That's the only reason you have for thinking it was the line that went out on Monday morning?

A. And I saw, know it was cut.

Q. That was cut on Wednesday night?

A. Wednesday night.

Q. And you saw it cut?

A. No, I didn't see it cut.

Mr. OLSON.—I move that this go out on the ground that it's perfectly evident that it is hearsay.

The COURT.—Objection is overruled at this time.

Q. Now, then, how were you able to determine that the line that was cut was the line that was brought out on Monday, merely from the fact that it was cut?

(Testimony of J. F. Haglund.)

A. When the line was brought out on Monday—

Q. Answer my question.

Mr. WARREN.—I submit, your Honor, that it is not proper for counsel to interrupt the witness.

A. The line that was put out on Monday was used on the starboard side that she was towing on all the time until Wednesday night, then they swung it over to port. I could see that that line was cut but the other one wasn't because she was still towing on that port line.

Q. Weren't both of the "Mikahala's" lines brought through the same chock of the "Celtic Chief"?

A. "Celtic Chief," yes, but not on board the "Mikahala."

Q. Now, do you know whether or not the line that was put on originally on Monday on the "Mikahala" was retained on the same side throughout the whole operations? [3030—2199]

A. I do.

Q. How do you know that?

A. She didn't have another one on board.

Q. You were out there at all times after the second one was put on board?

A. I was.

Q. When you examined the "Mikahala's" lines on Thursday, where were those lines? Where were they?

A. The line was aboard the "Mikahala."

Q. They were aboard the "Mikahala"?

A. Aboard the "Mikahala."

Q. And where was the "Mikahala" when you made that examination?

A. Lying at the "Mauna Kea" wharf.

Q. And you went aboard the "Mikahala" and

(Testimony of J. F. Haglund.)

there examined those lines? A. I did.

Q. Take the line that was put out first by the "Mikahala"; how did you examine that line?

A. The same as I would examine any other rope.

Q. State how you examined it.

A. By looking at it and opening the lace and saw how it was worn inside.

Q. Now, had that line been broken in the course of the "Mikahala" operation?

A. It had not been broken.

Q. It had been cut? A. Cut.

Q. And where was it cut?

A. On board the "Mikahala."

Q. How near the end of the line?

A. Five or six hundred feet from the "Celtic Chief."

Q. Five or six hundred feet. How near the "Mikahala" end? [3031—2200]

A. Right on board the "Mikahala."

Q. I'm asking you how far from the end of the line was it cut?

A. In the neighborhood of twenty fathoms.

Q. Twenty fathoms? A. Approximately.

Q. Inside or outside of the bulwarks of the "Mikahala"? A. Inside.

Q. How near to the mast on which it was fastened? A. It wasn't fastened to the mast.

Q. What wasn't it fastened to?

A. To the port bitts.

Q. How near those bitts?

A. Between the chock and those bitts.

Q. Where was it that you opened or unraveled the

(Testimony of J. F. Haglund.)

strands of the rope to make the examination that you said?

A. That I can't say. About the middle of the line, I should judge.

Q. How did you open up, did you cut it?

A. No.

Q. How were you able to unravel it?

A. Open the lace.

Q. And what did you find in there?

A. I found the yard all strained and you can pull them.

Q. Can you bring in a section of that rope that is a fair average piece of that line, now?

A. Not of the "Mikahala," I can of the "Mauna Kea."

Q. What has become of that line? A. Cut up.

Q. Cut up? A. Sold.

Q. Did you see it cut up? [3032—2201]

A. After a rope is used up then I sell it.

Q. Did you see it cut up?

A. I have seen it cut up.

Q. Did you see the "Mikahala's" line cut up?

A. Yes.

Q. Where was it? A. Up in my warehouse.

Q. And you actually observed the cutting up of the "Mikahala's" line? A. Yes.

Q. What was done with it?

A. Used for mooring lines.

Q. Now, do you know what the tensile strength of that line was after the "Celtic Chief" came off the reef?

Mr. WARREN.—Object to the question as imma-

(Testimony of J. F. Haglund.)

terial, improper, incompetent and immaterial, surely irrelevant.

Mr. WARREN.—I'll save time by withdrawing the objection.

Mr. OLSON.—Answer the question.

(Question read.)

A. Well, I know it wasn't half as much tensile in it as it was before it went out there.

Q. What was its tensile strength before it went there? A. Twenty-five tons.

Q. You are sure of that? A. Yes.

Q. How do you know that?

A. According to the table.

Q. What was the tensile strength afterwards?

A. I wouldn't risk more than five tons.

Q. I'm not asking you what you are going to risk. I'm asking you how do you now or whether or not you know what its tensile strength was.

A. I've got no machine to test it by. [3033—2202]

Q. Have you ever tested a line of that kind?

A. I have seen it tested.

Q. Where have you seen it tested?

A. Well, not in Honolulu.

Q. Tell us where it was? A. In Sweden.

Q. Did they have a testing machine?

A. It was some kind of a machine, I don't know what you call it.

Q. You don't know whether or not it was a testing machine? A. They used it in a rope works.

Q. How old were you at that time?

A. Between twenty and twenty-one, I think.

(Testimony of J. F. Haglund.)

Q. And you saw them testing rope there, did you?

A. I did.

Q. What kind of ropes did you see them test?

A. Hemp rope.

Q. Had you examined prior to that time to see whether it was in the same conditon as this rope of the "Mikahala"? A. I did not.

Q. So you don't know whether they ever tested a rope of this kind in this condition? A. No.

Q. Did you ever see a rope in the condition of the "Mikahala's" line tested? A. I seen it broken.

Q. Ever seen it tested? A. Yes.

Q. How? A. In purchase tackles.

Q. Where? [3034—2203] A. In Honolulu.

Q. How many times have you seen a rope, an eight-inch manilla hawser in the condition of the "Mikahala" rope after it came off. How many pounds did it require? A. Well, less than six ton.

Q. How did you know that?

A. Because I seen it broken.

Q. How do you know it was less than six tons?

A. By seeing it broken.

Q. How do you know?

A. I know a steamer like the "Mikahala" can't pull a six ton object off with her propeller, I seen it tested.

Q. You said they tested by purchase tackle?

A. Not so big as an eight-inch rope.

Q. Where have you seen an eight-inch rope tested?

A. I just said.

Q. Where? A. Spring line, alongside a wharf.

(Testimony of J. F. Haglund.)

Q. How was it broken?

A. Broken by turning over her propeller.

Q. And pulling on an object ashore?

A. Pulling on a stanchion.

Q. How do you know that it took only six tons to break the rope? A. Took less than that.

Q. How do you know?

A. Because I know she can't pull that much at all.

Mr. WARREN.—Now, I'm going to object to the manner of counsel in interrogating this witness.

Mr. OLSON.—In reply to the objection, I wish to state that I submit that I not only am fairly within the rules [3035—2204] of cross-examination and further that I have not in any way violated any of the rules as to the manner of my cross-examination.

The COURT.—I haven't noticed anything on Mr. Olson's part, except an insistence, and energy which I don't think is improper, and I don't think the witness is intimidated or anything of the kind.

Mr. OLSON.—Now, answer the question. Now, she was pulling by means of her propeller, was she, with a line fastened to shore?

A. To the wharf.

Q. How did she happen to be pulling on a line of that sort with a line fastened to a wharf?

A. Doing that every day before sailing.

Q. For what purpose?

A. Turning the engines over before leaving the wharf. It's done every day by every steamer before they leave the wharf.

Q. What is the purpose of that?

(Testimony of J. F. Haglund.)

A. To warm up her engines and see that everything is in good working order.

Q. How many times have you seen lines in the condition that the "Mikahala's" were broken in that way? A. Many times.

Q. Have you always examined those ropes to see that they were in the same condition as the "Mikahala's"?

A. I don't say that I examined every one of them. I examined several of them, may be dozens of them.

Q. And do you know they were broken on account of the general condition of the line or isn't it possible it was due to defects in the line, special defects?

A. No other defects, other than wear and tear.

Q. Might have been special weaknesses? [3036—2205] A. No.

Q. Had you examined those lines so carefully that you were able to say it wasn't due to some special defect? A. You generally find that out.

Q. Did you do that? A. I have in many a case.

Mr. WARREN.—I object to counsel putting questions before the witness has answered.

Q. Now, is that by straight pull that those ropes were broken? A. That was by steady pull.

Q. And you're prepared to swear that the "Mikahala's" line would have broken under a strain of that kind? A. I didn't try that particular line.

Q. Now, do you mean to say that the "Mikahala's" line would not stand a strain of more than six tons?

A. Less than six tons, I wouldn't risk six tons.

Q. So at the time the "Celtic Chief" was going off that line was only able to stand a strain of six tons?

(Testimony of J. F. Haglund.)

A. She had a better line on the port side.

Q. That line was in a much better condition?

A. That hadn't been towed on so long, that is why practically that we put one more on board of her.

Q. Now, how many tons would that stand?

A. Maybe that would stand half.

Q. What was the tensile strength of that line?

A. Same thing, twenty-five tons.

Q. And you think that would stand twelve and a half tons? A. I think so.

Q. An eighteen and a half tons was all that the "Mikahala" could exert upon those lines when the "Celtic Chief" [3037—2206] was coming off?

A. That's pretty good.

Q. Is that all?

A. Apparently, that would be all.

Q. Did you examine that boat in more than one place? A. Yes.

Q. How many places? A. I couldn't tell you.

Q. How many places did you unravel it?

A. I didn't unravel it any where, I just opened the lace.

Q. How many places did you open that up in that way?

A. Maybe I did in half a dozen places more or less, may be more.

Q. Now, take the first line, what is your best recollection? A. I couldn't tell.

Q. Did you examine it near the ends?

A. I didn't look at any particular part.

Q. Did you look at the middle of it?

(Testimony of J. F. Haglund.)

A. I may have looked exactly in the middle.

Q. And you don't know whether you examined it in that way once or six times?

A. Not the number of times.

Q. Did you examine it in more than one place?

A. I did more than twice, more than three times.

Q. More than four times? A. Yes.

Q. More than five times?

A. That I don't know.

Q. And you don't know in what part of the line it was that you made this examination?

A. Not particular part.

Q. Why did you say it was in the middle? [3038—2207]

A. It may have been in the middle.

Q. Why did you say, not a moment ago but some few minutes ago, that it was in the middle of the line?

A. The line was laid down on the after deck and it may have been in the middle.

Q. Did you find it in practically the same condition in all the places you opened up?

A. Practically in the same condition. I didn't examine it close to the ends.

Q. Can you produce a sample of the second line of the "Mikahala"? A. I could not.

Q. What's become of it? A. Used up.

Q. For what purpose?

A. I couldn't say; may have been sold to the junkman some of it.

Q. And it might have been used for mooring lines?

A. Yes, first, and then we sold it for junk at sixty cents hundred.

(Testimony of J. F. Haglund.)

Q. You don't know what's become of it?

A. Not now.

Q. You didn't then?

A. Not after it come to the warehouse, for mooring lines.

Q. And that is all you know about it?

A. And finally sold for junk.

Q. Did you see it sold for junk? A. I have.

Q. This one, "Mikahala" rope?

A. Not that particular line but I've sold it after it is useless and we got too much for fenders.

Mr. OLSON.—That's all.

Mr. WARREN.—I submit the witness is qualified to answer that objection.

Mr. OLSON.—I renew my objection as to his qualifications.

(Question read.) [3039—2208]

The COURT.—Objection is overruled.

A. Not the first one, wasn't fit for towing; the second one was.

Q. The second was?

A. The second was; that was, to tow a ship in and out a harbor, not for a wrecking purpose it wouldn't be of any use.

Q. Now, the "Likelike's" line, Captain, did you see that before the operations? A. I did not.

Q. Did you examine it?

A. I saw it out there before she commenced pulling on it.

Q. Do you know what kind of a line it was?

A. It was an eight-inch line?

(Testimony of J. F. Haglund.)

Q. New or old? A. New.

Q. Did you examine it after the operations?

A. Yes.

Q. Could you tell by that examination whether or not that line was fit or unfit for towing purposes thereafter? Good for similar towing purposes. Answer that question yes or no. Could you determine? A. Yes, I could.

Q. Was it or was it not fit for towing purposes thereafter? A. It was fit.

Mr. OLSON.—Just a second. Don't answer it so quickly. I object to the question on the ground the witness is not qualified to answer.

The COURT.—Objection overruled.

A. Yes, it was fit to tow with, that is, tow vessels in and out of harbor it would be all right.

Q. Where did the steamers "Helene" and "Like-like" go? What did they do after the "Celtic Chief" had been brought back to anchorage off the harbor?

A. They anchored out by the "Celtic Chief" over night, outside the harbor. [3040—2209]

Q. For what purpose?

A. Well, stay by her because that evening looked very threatening from the southward, cloudy and light southerly wind, and little rain, and we didn't know, might spring out strong wind and we thought it would be safer to keep the two vessels up there.

Q. What was the regular run of the "Mikahala" in December, 1909?

A. She was on the Molokai-Maui run, schedule to leave Honolulu on Tuesday evening, five o'clock and

(Testimony of J. F. Haglund.)

get in Sunday mornings.

Q. What, if anything, was done regarding her run?

A. Her run was substituted by another boat called the "Ke Au Hou" for that week.

Q. How does the "Ke Au Hou" compare in size with the "Mikahala," generally speaking?

A. Well, a much smaller boat.

Q. Was there any motion of any kind of the "Celtic Chief" on say, Tuesday and Wednesday when you were out there? A. Yes.

Q. What kind?

A. There was a little rolling motion as well as an up and down motion, grinding on the bottom, thumping; once in a while a swell, as the big swells come in and lifted her.

Q. Describe the up and down motion. How much was there?

A. Oh, the motion wasn't up and down motion couldn't have been probably more more than few inches. Of course, that's impossible to determine exactly. It was heavy enough at all times for us to notice at the boat; enough to shake her yards and masts and sometimes very severely too.

Q. Why?

A. The way it was coming down on the bottom after a big sea left her.

Q. How big *were* the sea?

A. The biggest swells, I should judge, about fourteen or fifteen feet. [3041—2210]

Q. Did you see any of that size yourself?

A. I did.

(Testimony of J. F. Haglund.)

Q. I show you Libellant's Exhibit "K" and ask if you, looking at this photograph, can tell us approximately the height of the swell there shown? (Hanging witness photograph.)

A. I should judge that swell to be about ten feet; maybe little more, that particular one here.

Q. What is there, if anything, about that picture, indicating size to you?

A. I don't understand what you—

Mr. WARREN.—Read the question.

(Question read.)

A. Them plates, they are about four feet in depth; the ship's plates on the side.

Q. What plates?

A. Probably the whole plate you see, about four feet wide.

Q. With white paint?

A. With white paint. Not quite, as far as I remember, the full plate wasn't painted white. The plate is generally four feet on a ship of that size.

Q. And how much was painted?

A. Probably three feet of it; three feet and a half, maybe. And that bulwark there, the black streak above, you see, is approximately five feet high.

Q. Anything else?

A. No, I don't know anything else.

Q. Now, how frequently would these seas come?

A. The large ones?

Q. The large ones?

A. I don't know as I timed them, but probably come in three, four, or five minutes; something like that, I

(Testimony of J. F. Haglund.)

should judge, with smaller swells between them, of course. [3042—2211]

Q. Did you personally observe all of the operations of the “Arcona” at the “Celtic Chief”?

A. I did.

Q. Basing your answer upon your own experience in seamanship and matters of navigation, what can you say as to the seamanship of the manoeuvres and operations of the “Arcona” in connection with the “Celtic Chief”?

Mr. OLSON.—Object to the question on the ground it is calling for the opinion of the witness and there is no foundation laid.

Mr. WARREN.—I’ll put another, preliminary question or two. Were there any operations on the part of the “Celtic Chief,” I mean on the part of the “Arcona,” or manoeuvres by that vessel and its officers, concerning which you have not yet testified, as far as you know?

A. Oh, there may have been others, may have been, yes.

Q. Movements of the vessel? A. Yes.

Q. Were there any movements of the vessel that you didn’t observe?

Mr. OLSON.—He’s already answered the question. I submit it has already been asked and answered.

The COURT.—I think it has been already answered.

Q. What movements of the “Arcona” were there that you did not observe?

Mr. OLSON.—Object to the question on the ground

(Testimony of J. F. Haglund.)

it is incompetent, irrelevant, and immaterial and calling for an impossible answer.

A. I misunderstood that question.

The COURT.—Captain Haglund, if you will please state just what you wish to correct.

A. I misunderstood that question which I had already stated that there was no manoeuvres whatever that I didn't observe during the time the "Arcona" was out by the "Celtic Chief," and the last question I misunderstood. [3043—2212]

Q. Now, aside from actual manoeuvres of the "Arcona" itself, do you know whether or not there were any manoeuvres with lines or boats between the "Arcona" and the "Celtic Chief" of which you did not know?

A. No, not any that I don't know about.

Q. Are there, then, any manoeuvres or operations, either of the vessel or its lines or between the "Arcona" and the "Celtic Chief," of which you have not yet testified? I'm speaking now of actual manoeuvres and operations.

A. Not that I can remember.

Q. Now, I'll ask you, basing your answer upon your experience in seamanship and navigation and the handling of vessels and salvage of them, what can you say as to the seamanship of the manoeuvres and operations on the part of the "Arcona" and its officers?

Mr. OLSON.—Object to the question on the ground it is calling for a conclusion of the witness, no proper foundation has been laid, and incompetent, irrelevant, and immaterial.

(Testimony of J. F. Haglund.)

Mr. WARREN.—I will direct it to specific instances. You've testified, Captain, that the "Arcona," on coming out, first dropped her anchor at a point about directly astern or in line with the stern of the "Celtic Chief," and about midway between the "Helene" and the "Mikahala"? Now, basing your answer upon your experience in navigation, seamanship, and salvage and such manoeuver, what can you say as to the seamanship of that manoeuver in so placing that anchor?

Mr. OLSON.—I object to the question on the ground it is calling for the opinion of the witness, incompetent, irrelevant, and immaterial, and no proper foundation been laid.

The COURT.—Objection overruled.

A. In my opinion, there was very poor judgment shown for the commander of the "Arcona" to direct his anchor so [3044—2213] far to leeward.

Q. Why?

A. Because he couldn't get into position that he desired, and had already spoken for.

Q. If the "Arcona" had desired and intended to so place its anchors and place itself in a position opposite the stern of the "Celtic Chief" and approximately midway between the "Helene" and the "Mikahala," where should she have dropped her anchor?

Mr. OLSON.—I make the same objection.

The COURT.—Same ruling.

A. About the place that it dropped it the second time.

Q. Why?

(Testimony of J. F. Haglund.)

A. Because then she had no trouble in getting herself in position after the ship was anchored.

Q. What conditions were there upon which you have based your answers?

A. Well, the conditions were such out there, that the wind was blowing from the eastward and the current was setting, coming from the eastward, setting to the westward, and both had a tendency to lead the "Arcona" down towards the "Helene" unless he lifted up his anchor to windward of the place that he want to take for the ship, position of the ship.

Q. Where was the captain of the "Arcona" at the time the white lights were sent up from the stern of the "Celtic Chief" as she was coming off?

A. I don't know where he was then.

Q. When had you last seen him prior to that instant?

A. A few minutes previous to that I saw him aboard of the "Celtic Chief," on the quarter deck.

Q. Where was the "Celtic Chief" at that time when you last saw the captain aboard?

A. She just commenced moving off the reef.

Q. How far had the vessel moved, approximately?
[3045—2214] A. How far, I can't state.

Q. Well, was she on or off the reef?

A. Part of it was still on the reef.

Q. And where was the executive officer at that time?

A. He was on board the "Celtic Chief."

Q. Do you know the size of the "Helene's" anchors.

A. Yes, sir.

Q. Well, will you state them?

(Testimony of J. F. Haglund.)

A. Two thousand pounds, approximately.

Q. That is the two together? A. No, each.

Q. Now, assuming the anchor of the Miller Salvage Company to be from five to seven tons, we'll say seven tons, and assuming also that the two anchors of the "Helene" and the anchor of the Miller Salvage Company were both fast, what, in your judgment, would be the value of the Miller anchor over the two anchors of the "Helene," or *vice versa*, if subjected to an equal strain?

Mr. OLSON.—Object to the question on the ground that it improperly assumes facts not in evidence; then, as a hypothetical question it does not properly state the evidence in the case, and furthermore, on the ground that it does not appear that this witness is qualified or competent to testify as to what strain was exerted.

Mr. WEAVER.—The words have been taken out of my mouth. I make the same objection.

Mr. WARREN.—I'll lay a little more foundation, your Honor.

Mr. OLSON.—Is the question withdrawn?

Mr. WARREN.—For the present. Have you ever seen an anchor, Captain? A. Yes, I've seen them.

Q. Do you know what they are used for?

A. Yes. [3046—2215]

Q. Have you ever had any opportunity to judge of the holding power of an anchor? A. I have.

Q. Either for holding the vessel anchored, the vessel itself or to use it as a grip on the bottom to heave on? A. I have.

Q. More than once? A. Many times.

(Testimony of J. F. Haglund.)

Q. Twice? A. Many times.

Q. As a practical matter, have you had occasion in your experience to judge of the comparative holding power of one anchor as against another, conditions on the bottom being equal? A. Yes.

Q. So that you could, in a given case, judge whether or not a particular anchor would be large enough or two small anchors for a given purpose.

Mr. OLSON.—I submit any question that counsel has asked, is a clear breach of the rule of leading questions.

The COURT.—Of course, those questions are leading. I take them as preliminary.

Mr. OLSON.—I take it then, the objection is sustained?

The COURT.—The objection is sustained, yes.

Q. What experience have you had, Captain, in comparing the relative value and power of one anchor over another?

A. Some anchors, some sea anchors.

Q. Different anchors, take the different anchors.

A. The bigger the anchor and the farther away from the object your anchor, the better hold it is.

Q. Can you answer more fully, Captain?

A. The farther the anchor is away, the smaller the anchor will be to the object and will have a better hold. An anchor dropped up and down from the ship, even if it was ten tons, would not have the same effect of an anchor a hundred fathom away weighing one ton; that would hold [3047—2216] this ship better than an anchor lying that way, weighing twenty tons.

Q. Referring to the anchor of the Miller Salvage

(Testimony of J. F. Haglund.)

Company and the two anchors of the "Helene," all of which were placed as you have already testified, and considering only their weight and the respective distances from the "Celtic Chief," what, in your judgment, was the comparative holding power of the Miller anchor as compared with the two anchors of the "Helene"?

Mr. OLSON.—I make the same objection again, if the Court please.

Mr. WEAVER.—He is not stating any experience other than your Honor would have on the same subject.

I want the record to show that I enter the same objection.

I have no objection as to qualifications, your Honor.

Mr. OLSON.—Q. Captain Haglund, what is the largest ship that you ever sailed on, ship or steamer, as a seaman, master, officer, or seaman?

A. A seaman, I've been on all kind of ship, all sizes, except the Atlantic liners.

Q. What is the largest anchor that you have seen actually in use, yourself you observing the operations? A. Belong to a ship?

Q. Yes, on which you were employed and used in connection with it? A. For the ship line?

Q. What? A. For the ship?

Q. For any purpose?

A. Well, I've seen this Miller anchor.

Q. Well, have you seen any other, as large as that, in use? A. I don't know as I have.

Q. About what would be the largest anchor that

(Testimony of J. F. Haglund.)

you've [3048—2217] seen in use and observed in use aside from this Miller anchor?

A. I have seen over five ton. We've got anchors, our own, down the Inter-Island there, weight about ten thousand pounds.

Q. Ten thousand pounds?

A. About that, approximately.

Q. You have them in store now?

A. Two of them I have.

Q. What are they used for?

A. They are used for any purpose that we may need them for, not for the steamers.

Q. Will you state the last time that they were actually used? A. They've never been in use yet.

Q. What other anchors?

A. I've seen anchors as big as them used up in Hamakua; probably some of them as big and heavier than Miller's.

Q. For what purpose? A. For wires.

Q. You mean the wire loading apparatus?

A. Yes, sir.

Q. Now, have you ever observed them in comparison with other anchors, as to holding power? Made any observations as to comparative holding power between those anchors on the Hamakua coast and others.

A. I don't really understand your question, Mr. Olson.

Q. Have you ever observed these large anchors on the Hamakua coast for the purpose of making a comparison with the other anchors for holding quality?

A. I have.

(Testimony of J. F. Haglund.)

Q. Now, how? In what respect?

A. I know them anchors laid on the Hamakua coast, were to hold the wires.

Q. Have you ever seen any smaller ones used for that purpose?

A. Generally a big one [3049—2218] and a small one attached to it.

Q. Have you ever seen any small ones used along the Hamakua coast?

A. Yes, all them wires haven't got the same anchors out. It depends on the strain supposed to be on, put on that wire.

Q. Are they laid constantly? A. Occasionally.

Q. Have you observed that some of those anchors weren't able to do the work that they were supposed to do? A. I have.

Q. And have you made observations in that way?

A. I have.

Q. How large are those anchors?

A. An anchor may drag and you have to haul it up and get it farther out.

Q. Isn't that dependent upon the holding quality of the bottom? A. It does in some cases.

Q. Have you ever observed any anchor used in those operations as small as a two-ton anchor?

A. Not for the sea.

Q. So you don't know?

A. For the boat there is anchors approximately two-ton.

Q. Have you ever observed whether a two-ton anchor would do the work that these anchors did?

A. They would not.

(Testimony of J. F. Haglund.)

Q. Have you ever observed whether or not a two-ton anchor would hold?

A. How could I test it if it is never done? It has never been used because we know better than to do it.

Mr. OLSON.—Move to strike the last part as not responsive.

The COURT.—I will grant the motion.

Q. Now then, Captain Haglund, will you state any other [3050—2219] case where you have observed the comparative use of an anchor as small as a two-ton anchor with an anchor as large as five tons or over, the comparative use in either case.

A. Will you repeat that question again, Mr. Olson, please?

Q. Will you state any other case in which you have made any other observation as to the comparative holding power of an anchor as large as a two-ton anchor or two anchors of two thousand pounds each, with an anchor as large as five tons or over.

A. Well, there was a comparison out at the "Celtic Chief."

Q. Aside from the "Celtic Chief."

A. Yes, I'm speaking of them wires.

Q. Where? A. About them landing wires.

Q. You said that they didn't lay two-ton anchors.

A. Not on Hamakua.

Q. Isn't that what you said?

A. Not Hamakua. There is one at Hanuipo used for the same purpose.

Q. Did they ever use a bigger anchor there?

A. Not necessary.

Q. I'm asking if they ever used a bigger anchor there? A. No.

(Testimony of J. F. Haglund.)

Q. So you don't know what would be the comparative holding powers from actual observation?

A. From actual observation?

Q. You don't know, do you? A. No, but—

Q. That's all that I want.

Mr. WARREN.—The witness hasn't finished his answer.

Mr. OLSON.—Go on and state what the rest of that answer was going to be.

A. An anchor may be only two tons, if you say—

Mr. OLSON.—Now, I submit, if the Court please, he is [3051—2220] not stating anything about observation.

The WITNESS.—I go out on one of the Inter-Island steamers, I drop an anchor that would weigh a thousand pounds—

Mr. OLSON.—Now, I appeal to the Court. Am I obliged to get the whole of a witness' answer that has absolutely nothing to do with his observation at Honuipo?

Q. Did that have anything to do with Honuipo?

A. No.

Q. Now then, any other case that you've had any chance to observe between an anchor as large as five tons or more or one anchor of two tons or two anchors of one ton each?

A. I certainly have, in many cases.

Q. Anchors as large as five tons?

A. You said one anchor of two tons and two anchors of one ton.

Q. That isn't what I said at all. I asked you if there was any other case where you had had an opportunity of observing and that you were able to

(Testimony of J. F. Haglund.)

make a comparison between the holding power of an anchor of five tons and more and an anchor of two tons or two anchors of one ton each?

A. I can't understand the question.

Q. What? A. I don't understand the question.

Q. Have you ever observed any case, other than you have already testified to, where you were able to observe, by the actual use, the comparative holding power of an anchor as large as five tons or more with one of two tons?

A. The holding power don't lie with the weight of the anchor.

Q. That's not what I'm asking you. [3052—2221]

A. I can't understand your question.

Q. Have you ever observed the use of a five-ton anchor or more with an anchor of two tons?

A. Yes, I have.

Q. Where? A. At the "Manchuria."

Q. Did you have any observation?

A. I tested pretty well.

Q. Where?

A. On the "Sheridan." I was aboard of her three weeks and laid every kind of anchor. We took the ship off the reef.

Q. Did you have an opportunity on either the "Sheridan" or "Manchuria" of observing how much more powerful an anchor of five tons is?

A. It don't lie with the weight, it lies with how the anchor is placed.

Q. I'm asking you to confine yourself to my question as to what you have observed. Now, then, answer the question.

(Testimony of J. F. Haglund.)

A. I don't understand the question.

Q. You have then never seen—

Mr. WARREN.—I object to that, your Honor. That is not fair.

Q. Now, Captain Haglund, do you mean to say then that you have never, on any occasion than you have testified to, had any opportunity of observing the comparative holding powers of an anchor as large as five tons with that of one as small as two tons?

Mr. WARREN.—I object to the question as not fair and improper in view of the witness testimony that he has observed them at that place, all kinds of anchors.

Mr. OLSON.—Withdraw the last question. At the "Sheridan" what was the largest anchor in use that you saw?

A. I never saw any of [3053—2222] them weighed.

Q. What?

A. I never saw any of them weighed.

Q. You say you don't know how large the largest one was?

A. Anchors as big as Miller's.

Q. You did see some as large as Miller's?

A. As heavy as Miller's.

Q. How many?

A. I couldn't tell you how many. We may have had as much as twenty anchors down at the "Sheridan."

Q. Did you have any opportunity at the "Sheridan" of observing whether or not an anchor as large as Miller's was more serviceable from a holding standpoint than an anchor as small as two tons?

(Testimony of J. F. Haglund.)

A. I certainly did.

Q. Explain to us one of those instances where you were able to make that observation.

A. I saw some heavy anchors come home to the "Sheridan" when a smaller anchor held with the same strain.

Q. Do you know what the condition of the bottom was in each instance?

A. I didn't look at it.

Q. It might have been due to a small anchor being fast to a hard rock and a big anchor on soft material, isn't that true? Answer my question.

Mr. WARREN.—I object to that. Isn't that true, answer my question. He doesn't give the witness time to get half a breath.

A. I answered you, Mr. Olson. I didn't know the condition of the bottom out there. I didn't put out for a diver.

Q. Now then, Captain Haglund, so far as the "Sheridan" is concerned then, you were not able to make any observation [3054—2223] as to comparison between small anchors and big anchors?

A. I don't say there was any difference in the bottom.

Q. So you didn't have any opportunity of observing holding powers of big anchors and small anchors in so far as in that instance?

A. I have in many occasions.

Q. In that instances?

A. Yes, big anchors come home where small ones would not on account of being laid farther out. The bottom may have been exactly the same.

(Testimony of J. F. Haglund.)

Q. But you did not know?

A. I didn't look at it.

Q. So that in the case of the "Sheridan" you were, you are now unable to state that you there observed any comparison between big anchors and small anchors when the bottom was the same in both instances? A. I didn't state—

Q. You did not observe the bottom?

Mr. WARREN.—Finish your answer, Captain.

A. I observed the conditions as I have already stated, that if an anchor was laid far away it had better hold and the anchor, although it was bigger in weight, would come home, and I presume the bottom was equal.

Q. Kindly answer my question, Captain Haglund. The question was this, in so far as the bottom being the same was concerned, did you make any observations in the case of the "Sheridan"?

Mr. WARREN.—I object to the question as asked and answered.

The COURT.—It's answered.

Q. Now then, in the case of the "Manchuria," did you have any opportunity of making comparisons between big anchors and small anchors where the bottom was the [3055—2224] same under each anchor?

A. Not the "Manchuria." I laid the two first anchors. That's all I know.

Q. How big were the largest anchors?

A. Well, I couldn't tell you the weight.

Q. You don't know?

A. Big anchors. I don't know who they belong to.

Q. All you did was to lay them?

(Testimony of J. F. Haglund.)

A. They belonged to the "Manchuria."

Q. All you did was to lay them? A. I laid them.

Q. And that's all? A. That's all.

Q. How large were they in comparison to the Miller anchor? A. That I don't remember.

Q. Do you remember of any other case where you had any opportunity of observing by comparison between a big anchor with a small anchor; a big anchor as large as five tons or more?

A. I don't remember.

Q. What? A. I don't remember.

Q. You don't remember any? Now then, I'll ask you this, isn't it true that distance adds a buoyancy because it makes the angle that much less?

A. I have stated so.

Q. That is true, is it? A. That's true.

Q. Now then, Captain Haglund, are you prepared to say that the "Helene's" anchors had any advantage over the Miller anchor on account of distance? A. I do.

Q. What was the depth of the water where the Miller anchor lay?

A. Well, so near as I can judge, it was about five fathom.

Q. What is the depth of the water where the "Helene's" anchor was laid?

A. About seven fathom.

Q. About seven fathom?

A. Between six and seven. [3056—2225]

Q. And how much farther out were the "Helene's" anchors laid?

A. Over a hundred fathom farther out.

Q. A hundred fathom?

(Testimony of J. F. Haglund.)

A. Over a hundred fathom.

Q. How far was the Miller anchor laid from the stern of the "Celtic Chief"?

A. Little less than 700 feet.

Q. How much? A. Less than 700 feet.

Q. Now, what was the height above the water? About how far was the place at which the Miller anchor line went over the stern of the "Celtic Chief" from the bottom, from the bottom of the ocean?

A. I don't understand you.

Q. What? A. I don't understand you.

Q. How far was it from the point where the Miller anchor line went over the stern of the "Celtic Chief" to the sea bottom straight down?

A. Oh, about 39 feet, I think; approximately forty feet; something like that; that is, from the upper part of the ship where the line went in.

Q. Are you prepared to say that with only forty feet from the point at which the Miller line went over the bulwark of the "Celtic Chief" to the sea-bottom that the "Helene's" anchors would have an advantage lying in water one or two fathoms deeper than where the Miller anchor was laid, over the Miller anchor? A. They certainly would.

Mr. OLSON.—Now, if the Court please, I submit that this witness has shown absolutely and unqualifiedly that he has never been able to test the comparative holding power of the Miller anchor of five tons or more.

Mr. WARREN.—I won't insist on the answer to that question because I regard the cross-examination as having brought out what I intended to show.

(Testimony of J. F. Haglund.)

Wednesday, November 1, 1911.

Q. The last question and answer, Captain, was this: Are you prepared to say that with only forty feet from the point at which the line went overboard the bulwark over the "Celtic Chief" to the sea-bottom that the "Helene's" anchor would have an advantage over the Miller anchor. Do you understand that, Captain? A. Not clearly.

Q. I confess I don't.

A. Will you please read that once more, Mr. Warren?

(Question read: Are you prepared to say that with only forty feet from the point at which the line went over the bulwark of the "Celtic Chief" to the sea-bottom, that the "Helene's" anchors would have an advantage, lying in water one or two fathoms deeper than where the Miller anchor was laid, over the Miller anchor?)

Q. To which question you answered, they certainly would. Now, I want to ask you why the "Helene's" anchors would have that advantage?

A. In regard to holding power?

Q. Yes.

A. Well, "Helene's" anchors would certainly have an advantage on Miller's anchor under those conditions which existed out there.

Q. Why?

A. Helene's" anchor was laid approximately twice as far from the "Celtic Chief" as the Miller anchor were laid, and, in addition to that, the "Helene" had cable on her anchors.

Q. Cable?

A. Chain, cable chain on her anchors; ninety feet

(Testimony of J. F. Haglund.)

in length on her starboard anchor and sixty on her port anchor. It would naturally sag down on the bottom a longer distance than [3058—2227] Miller's wire would if there'd been a strain in proportion to one another.

Q. Do you know the approximate weight of the anchor lines of the "Helene"? First, give us their size? A. The chain was inch and a half size.

Q. Do you know the weight? A. The weight?

Q. Of course, I can get tables, Captain, but I want your approximate judgment.

A. As near as I could remember, to state that correctly, but as near as I can judge, inch and a half chain would weigh—

Mr. OLSON.—Now, just a moment. I object unless it appears that the witness is qualified to answer as to the weight of the chain, it not appearing that he is qualified.

The COURT.—I understand it is merely a guess.

Mr. WARREN.—This is to be his judgment, your Honor.

A. I couldn't state it correct unless I refer to the tables.

Mr. WARREN.—All right, I'll prove it by books, your Honor.

Q. Is there any other way in which the anchors and chains of the "Helene," coupled with the manner in which the "Helene" was connected with the "Celtic Chief" and with her anchors, which has anything to do with the advantage that you have testified about?

A. I don't understand your question, Mr. Warren.

Q. Are there any other reasons than the distance

(Testimony of J. F. Haglund.)

at which the "Helene's" anchors were laid and the weight of the "Helene's" anchor chains which would contribute to the advantage of the "Helene" equipment over the Miller anchor equipment?

A. As to their holding power, you mean? [3059—2228]

Q. Yes, and effective power.

A. Effective power?

Mr. OLSON.—Now, we're talking about holding power, if the Court please. I submit it should be limited to that otherwise it will be multiplicitous.

The COURT.—Yes, it should be.

Mr. WARREN.—Well, confine it to holding power, Captain.

A. Holding power? I can't think of anything else outside of what I already have stated.

Q. Now, as to lightering operations, Captain, at the "Celtic Chief." Under what conditions was this done aboard the "Celtic Chief"?

A. It was done with considerable, lots of difficulties alongside of the "Celtic Chief" on account of the surf was running in alongside of her and with regards to the danger of the men in the boats, and also to the boats.

Q. What danger was there, Captain, in your judgment, to the boats?

A. If one of them swells had broken where the boats were lying it would have capsized the boats, thrown them in on the reef and would through that injure the men.

Q. Any other danger than capsizing?

A. Capsizing and breaking up the boats.

Q. How?

(Testimony of J. F. Haglund.)

A. May have been smashed up against the ship's side through a breaking coming in which would have broken the boat and also injuring the men that were in the boats at the time.

Q. How could they be injured in the boat?

A. They may be thrown in between the ship's sides and the boat, they may get hurt in the boat by oars getting tangled up, boat thrown over and they get drowned which happens in some cases in our business.

Q. How was the cargo received into the boats?

A. It was hoisted up out of the "Celtic Chief's" hole by a [3060—2229] single burthen run to a steam winch, then swung out by a yard-arm burthen and lowered by same into the boats.

Q. How could that yard-arm burthen be operated?

A. It was operated by taking after the slingload was hoisted up from the hole, the slack was taken in off the burthen and a turn taken around the belaying pin and that swung out and afterwards lowered into the boat.

Q. Is there any way in which danger could be avoided to the men or the boats by operating this yard-arm burthen in any particular way?

A. Yes, there is.

Q. Yes? One that was used at the "Celtic Chief," I mean?

A. At the "Celtic Chief" there was no other means of doing it because for one reason we were working one gang, the winch was in such condition that if you run the burthen fall to the yard-arm burthen to the winch, it was not powerful enough to raise that sling up to avoid that danger.

(Testimony of J. F. Haglund.)

Q. What danger would there be if you couldn't raise the sling?

A. The danger would be that the boat is liable to raise itself up against the slingload in the swell and the men may get hurt with the slingload. The slingload may have struck the boat on her gunwale and capsized the boat or it may get between the boat and the ship's side and get under the boat and capsize the boat.

Mr. OLSON.—Move to strike except what is responsive to the question, namely, what was the danger from this yard-arm and the sling?

The COURT.—Motion is denied. [3061—2230]

Q. Why, in your judgment, was this winch not powerful enough to do that?

A. Well, that proved itself by hoisting the load from the hole.

Q. How many bags of fertilizer in a slingload?

A. The average slingload was about four bags, from three to four bags.

Q. And do you know the weight of a bag?

A. The nearest to my judgment it would be about, average two hundred, over two hundred and twenty-five pounds, so near as I could judge.

Q. How long would it take with that winch to hoist an average slingload from the hole out over into position to be lowered?

A. Well, I don't remember ever timing that, but it was hoisted very, very slowly.

Q. Do you personally, do you know of your own knowledge what was the matter with that winch, if anything? A. I do not.

Q. What's that? A. I don't know.

(Testimony of J. F. Haglund.)

Q. Do you know what kind of water was used for the boilers?

Mr. OLSON.—Object to the question on the ground that it is leading.

Withdraw the objection.

A. I know that there was salt water used for the boilers because I saw it pumped on board into the boiler.

Q. Now, you say you were working two hatches?

A. Yes, sir.

Q. How long did you continue to work two hatches with this one winch?

A. If I remember correctly, it's up until Wednesday, about noon time.

Q. How could you use this winch for two hatches?

A. Well, the winch had a gypsy-head or barrel on each side of the forward house, so each of the falls [3062—2231] were lead to each of the gypsy-heads.

Q. That is, you say, one fall from each hatch?

A. One fall from each hatch was lead to the opposite gypsy-head.

Q. How were those operated?

A. Well, we could, at no time, have hoisted them at the same time because the winch wasn't powerful enough. We had to hoist them alternately. When one load was hoisted out, swung out to the yard-arm burthen, of course, the winch will hoist the load out of the other hole.

Q. Now, when you, after twelve o'clock on Wednesday at which time you stopped using the winch for both hatches, how was the lightering done?

A. A scow was sent out there with a steam engine

(Testimony of J. F. Haglund.)

aboard of her and it was moored on the "Celtic Chief" port side, amidships, and the fall was used for taking the cargo out of the main hatch was put to the winch on the scow.

Q. How many bags of fertilizer taken out in a sling with the donkey on the scow?

A. Well, on account of the swell that was rolling in there it was rather difficult to keep the scow in a stationary position, consequently, we couldn't put in very big loads, only from four to five bags, if I remember **correctly**.

Q. How long did it take to get a slingload from the hatch and over to the yard-arm with that winch?

A. Considerably less time than hoisting it up.

Q. Well, comparatively how long?

A. Half of the time, I should judge, as near as I can remember.

Q. Now, after the donkey was brought out on the scow and used for the main hatch, why couldn't you use the [3063—2232] yard-arm burthen fall on to the cylinder or a gypsy head of the winch to raise a slingload if necessary?

A. Well, for the reason that I have already stated, the winch was **not** powerful enough, not quick enough.

Q. How were these lightering operations conducted after dark, say during Tuesday night and Wednesday night?

A. They were conducted in the same manner as during the day; may be only little more difficulties on account of the darkness.

Q. How would darkness make any difference in the difficulty?

(Testimony of J. F. Haglund.)

A. Well, in darkness, of course, no one can see the swell coming in before it strike the boat, while in daylight you will be prepared for them so near as you could.

Q. In your judgment was the "Celtic Chief" in any danger by reason of her position on the reef?

A. Yes, she was.

Q. On what do you base that opinion? State your reasons for that.

A. On practical knowledge.

Q. Well, of what was she in danger?

A. She was in danger of springing a leak for one thing.

Q. How could she spring a leak?

A. Thumping and grinding on the reef on the bottom. She was also in danger of in case anything shall happen to the towlines of the towing steamers as the wind placed her on the reef and from that would be bilged and probably a total loss, cargo and ship both.

Q. What conditions were there which would have any tendency to throw her broadside?

A. There was quite a swell running in on the southward and eastward which struck the ship on the starboard quarter a couple points, so near as I can judge. Wind and current had both the tendency to swing her stern [3064—2233] to the westward, as well as the swell.

Q. In your judgment, were any of the Inter-Island steamers in danger at any time in those operations? A. Not in great danger.

Q. What danger?

(Testimony of J. F. Haglund.)

A. What may happen to the towlines, foul up. That's the only danger there was there in regard to those steamers.

Q. Well, in the event of anything happening to their towlines what might the consequences be?

A. May foul her propeller and disable her; may have been a collision between the different boats.

Q. If a hawser should part, how long do you think it would take to get the engines of the steamer stopped?

A. Well, that depends to a great extent where the engineer would be at the time you gave the signal to stop the engine.

Q. Supposing the engineer to be in the most convenient position and the signal given under the most favorable circumstances for it being done?

A. Merely a few seconds.

Q. How long would it take for a hawser to get into a propeller?

Mr. OLSON.—Object to the question on the ground that it calls for a conclusion on which it is impossible for the witness to give any definite statement.

Mr. WARREN.—I'll change that would to might. How long might it take for a hawser to get in a propeller?

Mr. OLSON.—I submit there again the witness is not qualified to answer and it is something on which the Court requires no opinion from this witness.

Q. Would it be possible for a hawser to get into the propeller before the engines could be stopped even under the most favorable conditions? [3065—

(Testimony of J. F. Haglund.)

Mr. OLSON.—Object to the question on the ground it is calling for a conclusion of the witness, the opinion of the witness, and the witness is not qualified to answer and also a matter on which no opinion is required.

Let me ask a question or two of the witness.

Q. Captain Haglund, how often have you seen lines get afoul of propellers of steamers?

A. Many times, Mr. Olson.

Q. You have seen it many times?

A. Many times.

Q. How many times have you see a propeller injured by lines getting afoul of the propeller?

A. I don't understand your question clearly.

Mr. OLSON.—Repeat the question, Mr. Stenographer. (Question read.)

A. I never saw any propeller injured, but I seen many a line get injured by it, and in a few cases, accidents to the ship.

Mr. OLSON.—That's all.

Mr. WARREN.—I submit the witness is qualified to answer, your Honor.

Q. I'll ask you Captain, where has your experience been in this matter of seeing hawsers parted and getting into the propellers?

A. Here, in the Inter-Island steamers in Honolulu harbor and also outside in other ports, quite often get a stern line in when it parts, or a towline.

The COURT.—What class of boats at these different experiences as compared to the kind of boats engaged out there at the "Celtic Chief"?

A. Same kind of boats.

(Testimony of J. F. Haglund.)

The COURT.—It seems to me that Captain Haglund is qualified? I allow the question. (Question read.) [3066—2235]

Mr. OLSON.—I object on the ground it is leading.

The COURT.—I sustain the objection. The form of the question is leading.

Q. What is the shortest time, Captain, in your experience in which you've seen a hawser snap, part, and get into her propeller? A. Less than a second.

Q. What is that? A. Less than a second.

Q. What were the conditions in that case where it got into the propeller in less than a second?

A. The towline being fast forward of the propeller and immediately, one or less than one revolution would drag it in.

Q. Would it make any difference where the hawser parts as to the danger of it getting into the propeller?

A. Yes, it does, and it also depends on the where a hawser is fast aboard the towing ship.

Q. And, in your judgment, was there any danger of any such thing as that happening out here on the "Celtic Chief"?

Mr. OLSON.—Object to the question on the ground the question has been fully answered.

The COURT.—The objection is sustained.

I set aside my ruling, it appearing the question is different from what I first thought.

Mr. OLSON.—Then I object on the ground that the witness is not qualified to answer; furthermore, it is calling for a conclusion of the witness where no opinion is required.

The COURT.—I'll sustain the objection.

(Testimony of J. F. Haglund.)

Q. Now, Captain, did you bring a sample of the "Mauna Kea" hawser that was used out there at the "Celtic Chief"? A. I have.

Q. Is this the piece? (Handing witness piece of rope.) [3067—2236]

A. That's the piece from the "Mauna Kea."

Q. Do you know about what part of the hawser this is taken from?

A. Taken from the part I've got in the warehouse now.

Q. Do you know whether or not it was taken from the end or from the middle or as near where as you can give us?

A. I couldn't possible state. I could state it was not taken close to either end, but how far from the end I could not state.

Q. Using this, well, I guess, perhaps, we'd better have this in evidence before I question on it.

Mr. OLSON.—I have no objection to this being offered in evidence.

Mr. WEAVER.—No objection on behalf of the Miller Salvage Company.

(Libellant's Exhibit "O," Testimony of Capt. Haglund.)

Q. Now, using this sample, Captain and referring to your testimony of the other day as to internal wear of the hawser, will you indicate to the Court what you mean by that on this sample?

A. By opening the lays of the rope you can see the way the yarns are powdered up, the internal part of it. You wouldn't find that in a newer rope without being stretched. The life is out of this rope.

(Testimony of J. F. Haglund.)

Mr. OLSON.—I move to strike that last statement on the ground that it not responsive.

The COURT.—I sustain the objection.

Mr. OLSON.—Then the motion is granted, as I understand.

Q. Well now, looking at this sample, Captain, I'll ask you, basing your answer on your experience, what effect on the life of the rope has this condition that we see here.

Mr. OLSON.—I object to the question on the ground that [3068—2237] the condition of that rope has already been fully gone into by the witness.

The COURT.—Objection overruled.

A. The tensile strain of this rope in the condition it is now is certainly not much more than half of its tensile strain when it was new, approximately, I should judge, and, consequently useless for the purpose that it was made for.

Q. Looking at the interior condition of one of these strands what is shown by that appearances as to the—

A. The appearance of them yarns, in the center, half yarn, as we call them, they look as if there was nothing the matter with them, but they're all strained and can be picked to pieces, than you could a new yarn of a similar rope. The oil is out of it and the life is strained out of the rope.

Q. What difference does it make whether there is oil in or out of rope, Captain?

A. Well, most ropes is made with oil and a severe amount of strain on that rope. The oil is greased out of it and that forms a sort of a—

(Testimony of J. F. Haglund.)

Q. Do you know from your experience, approximately how much of this hawser has been stretched to the foot?

Mr. OLSON.—Now, just a moment. I object on the ground it doesn't appear that the witness is qualified to testify on that point.

The COURT.—Objection overruled.

A. The stretch of the rope depends a good deal of how it's made up. [3069—2238]

Q. Now, referring to this particular rope.

A. When this particular rope was new, it looked altogether different regarding the lays than it does now.

Q. What do you mean by the lays?

A. It was shorter. This piece of rope, one, two, three, four, five strands when it was new probably showed may be seven.

Q. How do these strands or lays compare in size with their size when new?

A. Well, a rope, after it's been in the water, as a rule, swells up a great deal, but while it's under strain, the longer and the severer the strain is put upon the rope, of course, the smaller it gets in regard to its diameter or circumference, but after letting go that strain the rope being in the water it will still maintain the same circumference as it had previous and may be bigger.

Q. Now, did you try to get, Captain, part of a new twelve-inch manilla hawser? Have you a sample of a new twelve-inch hawser of this kind or line?

A. Not of this particular make, no. I could get a fourteen-inch hawser which we have in the ware-

(Testimony of J. F. Haglund.)

house for the purposes of the "Mauna Kea" in case of heavy tows. Finding out that the twelve-inch was not strong enough so we got out a fourteen-inch hawser in the warehouse.

Mr. OLSON.—I move to strike all the testimony in regard to the fourteen-inch hawser, it being immaterial.

The COURT.—Motion is granted.

A. And I also have a twelve-inch hawser, but the lay of it is a little more soft lay in comparison to what this—

Q. Did you bring a sample of an eight-inch line that was approximately the same make and lay as that twelve-inch line was?

A. Approximately the same. [3070—2239]

Q. Is this a sample of the eight-inch? (Handing piece of rope to witness.)

A. That's an eight-inch line, yes.

Q. Now, I'd like to offer this in evidence.

Mr. OLSON.—I object to the evidence on the ground it is immaterial.

Mr. WARREN.—I'd like to offer this in evidence as a sample of a new rope of the same lay, as the witness puts it, as this twelve-inch hawser was when new, for the purpose of permitting the Court to compare the hardness and internal appearance of strands between new and old rope, this being the nearest we can come in material and make to the other rope.

Mr. OLSON.—I object to the offer on the ground that it's immaterial, it not being the same size, being smaller.

The COURT.—It think I should sustain the objection. The objection is sustained.

(Testimony of J. F. Haglund.)

Mr. WARREN.—What is the comparative hardness of a new strand of this hawser as compared with its present condition?

A. Much harder. You couldn't when that rope was new, open up with your finger like you can now.

Q. Is there any difference, taking a new twelve-inch hawser of this kind and a new eight-inch hawser, any difference in the hardness of their strands?

Mr. OLSON.—Object to the question on the ground that it is immaterial.

Mr. WARREN.—Because I can't produce a sample of this line as new or a line like it when new, when I can produce and offer to produce a sample of an eight-inch line of the same lay, make, and material, as this twelve-inch line was when new. I'd like to ask the question if it's possible to buy a hawser of that sort in E. O. [3071—2240] Hall's or anywhere in this territory, Captain?

A. Not in Honolulu.

Q. I'll ask you further, Captain, can you produce a sample of an eight-inch manilla hawser such as was used by the steamer "Mikahala" at the "Celtic Chief" operations?

A. That's one, that is the eight-inch line as used by the "Mikahala" at the "Celtic Chief operations; also by the "Likelike."

Mr. WARREN.—I offer it is evidence.

Mr. OLSON.—I object to it, it is immaterial.

The COURT.—I think it should not be admitted for that purpose. I sustain the objection at this time; if there is any other purpose we will consider that.

Recess.

(Testimony of J. F. Haglund.)

Mr. WARREN.—I understand, Captain, that you saw the hawsers of the "Helene," both before and after the "Celtic Chief" operations. Now, directing your attention to the hawser which was put on by the "Mikahala" on Monday and which you say later was cut, will you describe the difference in condition between the hawser as new and after the operation?

Mr. OLSON.—I object to the question on the ground it has already been fully gone into.

Q. Directing your attention to the hawser of the "Mikahala" which was put on on Wednesday, second one, which you said you also saw. I'll ask you to describe the difference in condition between the hawser as new and as it appeared after the operation?

A. Well, in looks I should judge it would be half worn as you call it. By that I mean maybe a half of the tensile strain been taken out of it.

Q. Now, in saying heretofore that a line after being so used is only fit for tying up purposes of tying up [3072—2241] rope. What do you mean by tying up rope?

A. Well, a rope of this kind, this twelve-inch hawser is now, is sold to the junkman or secondhand man, whatever you may call it and he sells the inside yarn to Chinamen for tying up bananas, bags of any description; may be used for tying up bundles in some cases.

Q. Why in mooring lines? Why in your testimony before why did you say it was fit for mooring lines in Honolulu Harbor?

A. In Honolulu Harbor, yes, I answered that. You don't have to have very good lines because the

(Testimony of J. F. Haglund.)

harbor is smooth and there is no motion to the ship outside of the time that you are turning her engines over then you have to run out a good string to work on.

Q. When you got back on the "Celtic Chief" on Wednesday night, after making the rounds of the vessels, did you then observe the Miller line over the stern? A. I did.

Q. Describe its position at that time as to whether or not it was taut or otherwise?

A. Well, in my opinion it was not so taut as it could have been made by the purchase that was rigged up aboard the ship there for that purpose.

Q. You understand how that purchase tackles were rigged by the Miller Salvage Company, do you?

A. I do.

Q. Do you know how many men it required to fleet the second luff tackle? A. Second luff tackle?

Q. Yes, third purchase, second luff?

A. That all depends on how rapidly you want to do it. It could be shifted. The second luff could be shifted comfortably enough with four men.

Q. How many sheeves in the block of the tackles [3073—2242] on the second luff?

A. On the second luff, if I remember correctly there was two double sheeve blocks.

Q. And how many sheeves in the first luff tackle?

A. As near as I can remember it was three.

Q. And in the main tackle? A. Three also.

Q. What experience have you had in the rigging of tackles of that kind?

A. Quite a lot of experience in rigging up purchase tackles.

(Testimony of J. F. Haglund.)

Q. Are you able to determine that any given set of tackles what the ultimate force will be on the main purchase when rigged similarly as the Miller tackles were rigged, with the aid of scientific books if necessary? A. Yes, I could.

Q. Do you know the size of the ropes used by the Miller Salvage Company?

A. Well, I never measured the ropes out there, but so near as I can remember, I think—

Q. By looking at them what would you say?

A. By looking at them I should judge the main purchase was about six, maybe seven-inch rope; that is, circumference. And the first luff, I should judge, was about five-inch line; maybe five and a half. And the second luff or the treble tackle maybe three and a half inch, maybe four-inch. I don't call it to memory so very well, but nothing heavier than a four-inch anyway.

Q. Well, now, considering tackles such as the Miller Salvage Company tackles were rigged on that occasion, I'll ask if you can tell us how many feet of line the fall would have to be heaved in by the capstan or other means to move the block on the main tackle one foot?

A. To move the block on the main tackle? [3074—2243]

Q. Yes, the main tackle, where it was made fast to the manilla hawser?

A. To move that block a foot would require to heave in six feet of the pulling part of that rope and on the second tackle, which was the same treble blocks, would require six times that would be thirty-

(Testimony of J. F. Haglund.)

six feet. The *the* second luff, which was four rove would be four times thirty-six, would be one hundred and forty-four feet on the third fall.

Q. Do you know, Captain, independently of the use of any scientific book, what their proportionate force would be if one pound pull were exerted upon the fall of the second luff tackle, how much power had to be applied to the main block on the main tackle. Do you know the proportion independently of books?

A. No, I couldn't figure that out in my head. I might the first tackle. The first tackle, say, one tackle at a time, but I couldn't possibly figure it out in my head on luffs or second purchase upon purchase.

Q. Do you know how the Miller wire was supplemented to bring the Miller line as a whole on board the ship?

Mr. WEAVER.—I object to that as leading.

Mr. WARREN.—Do you know how it was rigged, Captain? Do you know how the Miller line was rigged at the stern of the ship?

A. How it was rigged?

Q. Yes.

A. Well, there was a wire leading from the anchor, a ten-inch line, as *I* near as I can judge, shackled to the wire, the main wire.

Q. Do you know the size of the hawser?

Mr. WEAVER.—I object to that, it is not shown he knows any hawser.

Q. Well, go on, Captain, then. Through that same shackle where the ten-inch line was shackled on,

(Testimony of J. F. Haglund.)

what kind of a wire?

A. Ten-inch manilla [3075—2244] rope. There was a preventer wire run through, I should judge about probably maybe a half an inch to three-quarter inch diameter wire for a preventer rig.

Q. How was that preventer run?

A. It was run inboard through—

Q. How, with respect to the shackle?

A. It was rove through the shackle. The two ends went on board of the "Celtic Chief," if I remember correctly. Whether that was put on for the purpose of strengthening this ten-inch manilla hawser or not, of course, I don't know, but it was there.

Q. Now, can you give us from the tables the tensile strength of the wire?

A. That ten-inch manilla rope?

Q. Can you find in this, Captain, the tensile strength of the wire?

A. I don't know the size of the wire exactly.

Q. Well, for the wire that you have described, three-quarters inch in diameter?

A. Tensile strain of a three-quarter inch galvanized steel wire would be twelve ton and three-tenths.

Q. What book are you using? A. Roebling's.

Q. Now, you get back to iron wire. Of course, the tensile strength is a great deal less. Now, for instance—

Mr. WEAVER.—What's that?

A. The tensile strength of an iron wire.

Mr. WARREN.—Steel.

A. I testified about steel.

Mr. WEAVER.—Is there a difference between the

(Testimony of J. F. Haglund.)

strength of galvanized steel with a steel wire not [3076—2245] galvanized?

A. The strength of it is not different, but there is a great deal of difference between a steel wire and an iron wire.

Mr. WARREN.—And the tensile strength of a ten-inch manilla hawser.

Mr. WEAVER.—What is the witness reading from?

Mr. WARREN.—That is Tubbs' Manual.

A. 78,370 pounds.

Q. That in tons is?

A. Thirty-nine tons, approximately.

Mr. WARREN.—This is from Tubbs' Manual. With the hawser and wire lines as you have described the hawser shackled to the cable wire, and a small wire coming through the eye of the shackle, can you tell us what would be the greatest amount of strain which could be put on that combined rigging from the shackle up.

Mr. WEAVER.—One moment. I object to that.

Q. Taking into consideration these breaking strains of the hawser and wire that have just been given.

Mr. WEAVER.—I object to the question as a hypothetical question, it is indefinite and improper in this case for the reason that it doesn't apply to the case particularly.

I withdraw my objection.

A. Well, the greatest amount of strain that could be put on there without breaking would be the tensile strain of the manilla hawser, ten-inch manilla

(Testimony of J. F. Haglund.)

hawser and one part of that steel wire.

Q. Why?

A. Because the bight of that steel wire running through that shackle is such a short bend that it wouldn't act in the same manner as it [3077—2246] would if it was run over a big sheeve. It would break in that particular part. If it was run over a big sheeve, of course, it would be double the strength of a single part.

Mr. WEAVER.—I move to strike out that last part of the answer as a conclusion of the witness. The witness is not an expert and it is hearsay.

Mr. OLSON.—Same objection.

Mr. WARREN.—Then I'll ask you, Captain, if you know what the size, the thickness of the object, whether part of the shackle or otherwise—

Mr. WEAVER.—Is my motion granted?

The COURT.—Yes.

Mr. WARREN.—Through which this wire was run? In other words, what was the diameter of the object around which it passed?

A. Well, I don't exactly remember the size of the shackle, but it, I shouldn't think it would be over two inches at the very most, in diameter.

Mr. WEAVER.—I move to strike out that answer.

Mr. WARREN.—Where did you see the shackle?

A. I have seen the shackle in the wire on board the "James Makee," not at that particular time. Whether that was the same shackle or not I don't know.

Q. How near did you see the shackle on the

(Testimony of J. F. Haglund.)

manilla wire? What was the closest point, to your view?

A. At this time, on the "Celtic Chief," I did not see it out there.

Q. Oh, you didn't see it at all? A. No, I did not.

Mr. OLSON.—Well, I move to strike the witness' statement with regard to what he saw on board of the "James Makee."

Mr. WARREN.—No objection. [3078—2247]

The COURT.—So ordered.

Q. Assuming, Captain, that shackle to be in diameter, either pin or the arms, to be one and a half or two inches, what, in your judgment would be the relative strength of that wire rove that way?

Mr. OLSON.—I object to the question unless it first appears that the wire was rigged in that way.

Mr. WARREN.—I think that if I may reserve that question to go over until the morning until I look through the testimony, I have very few more questions. What in your opinion, Captain, was the cause of the floating of the "Celtic Chief," stating upon what you base your opinion, including your own experience in salving vessels, in maritime matters and in navigation, as well as your knowledge of the facts.

Mr. OLSON.—Object to the question on the ground it calls for the opinion of the witness, he is not qualified to answer and there is no proper foundation laid.

Mr. WEAVER.—I make the same objection.

The COURT.—It may be understood, Mr. Warren, that the question shall be limited to his own knowledge.

(Testimony of J. F. Haglund.)

Mr. WARREN.—The question is put to his own knowledge of the facts and his own experience altogether independently of what he has heard from the testimony of other witnesses.

I have no objection if counsel for Miller Salvage Company wish to cross-examine him further on this before he answers.

May I ask another question or two?

The COURT.—Yes.

Q. Can you state, Captain, approximately what strain there was, if any, upon the Miller line from eleven o'clock on until the ship came off?

Mr. WEAVER.—I object to that as calling for an opinion of [3079—2248] the witness on the ground he is incompetent to answer and on the ground it would be merely hearsay and not within any observation.

Q. What in pounds or tons, in view of your knowledge of the way that Miller tackle was rigged throughout and the power used on the second luff?

Mr. WEAVER.—I object to that, if your Honor please, as calling for an opinion of the witness on a question which is hypothetical and indefinite being based on no sufficient foundation.

Q. I'll ask you, Captain, if you know and could you judge from your experience whether or not a winch, which was the more powerful, the ship's winch or the capstan as used by the Miller men. You know how the capstan was operated, do you, Captain? A. I do.

Mr. WEAVER.—I object to that, if your Honor please, as leading.

(Testimony of J. F. Haglund.)

Q. I'll ask you, Captain, if this winch was operated by sixteen men, I mean the capstan, was operated by sixteen men; I'll ask you now, if you can tell us which, in your judgment, was the more powerful, the capstan or winch.

Mr. OLSON.—I object to the *question the* ground it doesn't appear that the witness knows all the facts necessary for the purpose of answering the question.

Mr. WEAVER.—I make the same objection.

The COURT.—Let's see what he knows about the capstan first.

Q. What kind of a capstan was that?

A. That is the ordinary ship's capstan.

Q. Did you see it? A. I saw it.

Q. Do you know how many bars there were?

[3080—2249]

A. If I remember correctly there was eight bars.

Q. Did you see it being operated by the Miller men?

A. I saw the Miller men leaving on it occasionally.

Q. And between occasions what did they do?

A. Miller's luff tackles was laid to the steam winch of the "Celtic Chief" several times to my knowledge.

Q. What time of day was that that they used the winch?

A. Different times of day and also during the night.

Q. How?

A. That winch was used by Miller's tackles after eleven o'clock on Wednesday night that I can testify to.

(Testimony of J. F. Haglund.)

Q. Which, the winch?

A. Winch, the barrel of the winch.

Q. You remember that? A. Yes, sir.

Q. How frequently do you know whether or not any requests were ever made by Captain Miller or his men for the use of the winch?

A. I couldn't state that I heard of any request, but I heard Captain Henry telling Captain Miller not to delay the discharging of the cargo by using that winch. I heard that. That was on Wednesday afternoon.

Q. Prior to that time do you know whether Captain Miller was using the winch?

A. Prior to Captain Henry—

Q. Yes, prior to Captain Henry saying that?

A. Yes, he did.

Q. After that, do you know when Captain Miller commenced using it?

A. I couldn't tell the time Tuesday or Wednesday night that I can tell. It was after eleven o'clock, between eleven and half-past eleven because I was down on the main deck right along the main hatch when I saw it.

Q. Was that winch ever out of use by both sides, both parties? Was there any time when it was not in [3081—2250] use either by the Inter-Island or by Captain Miller?

A. Not up until shortly before midnight I couldn't tell you exactly. It may have been half-past eleven or may have been few minutes later, I couldn't very well state that to a minute. We was discharging with the winch from the "Celtic Chief's"

(Testimony of J. F. Haglund.)

port side into the boats, "Helene's" boat on the port side of the "Celtic Chief" and the barrel on the starboard side of the "Celtic Chief" was used for discharging freight at that time.

Q. What difference was there in the speed in which the fall from the second luff was taken in by the capstan and by the winch? A. Oh—

Mr. WEAVER.—I object to that unless it is shown that the witness knows and observed of his own knowledge what the difference was.

Q. Did you see them taking ropes in by the winch, Captain? A. Yes.

Q. And by the capstan? A. Yes.

Mr. WARREN.—I submit he can answer the question, your Honor.

The COURT.—I allow the questionn.

Mr. OLSON.—Just a moment, I'm going to object to that question on the ground that it is immaterial unless it appears that the resistance at the times that the comparison was made was the same.

Q. I'll add to my question, Captain, while the Miller Salvage Company were heaving on their tackles?

A. While they were heaving on them?

Q. Yes. Any difference in speed while they were heaving on their tackle?

A. Yes, there certainly was.

Q. Approximately how much?

A. Oh, the difference in the percentage of it, I couldn't very well state. When the tackle is slack, of course, naturally enough, the fall will come in more rapidly than [3082—2251] after they commenced

(Testimony of J. F. Haglund.)

getting strain on it.

Mr. WARREN.—I think it is proper now to ask the question which in your judgment, Captain, was the more powerful of the two, heaving by the capstan or by the winch?

Mr. OLSON.—Object to the question on the ground that it doesn't appear that the Captain knows either the power that the men were capable of exerting or the power of the winch.

Mr. WEAVER.—We object to the question on the same grounds.

Mr. OLSON.—And, therefore, he is not qualified to answer.

The COURT.—I'll sustain the objection without prejudice to your adducing further proof.

Q. So then, Captain, you really can't say whether there was any power at all on the Miller line, can you?

Mr. WEAVER.—I object to that, if your Honor please, as leading.

The COURT.—I sustain the objection.

Q. Do you know how much power, if any, was exerted on the Miller line?

A. Well, I know there was not so much power, exerted on that line as the tensile strain of a ten-inch manilla rope, how much less, of course, I'm not prepared to say.

Mr. WEAVER.—I move the answer be stricken out as being the opinion of the witness and the witness is not qualified to answer.

The COURT.—It seems to me the fairest thing I can is to allow the other side to ask questions to show

(Testimony of J. F. Haglund.)

what he bases this opinion upon.

Mr. WARREN.—Then your Honor reserves your ruling on the motion to strike?

Q. Having just stated, Captain, that that strain was not [3083—2252] enough to break that ten-inch manilla hawser, I'll ask you on what do you base that statement?

A. Well, before I came aboard the ship about eleven o'clock, that line, that wire outside of the "Celtic Chief" leading to Miller's anchor was lying in considerable sag, as I have already stated, and after getting on board the ship, seeing that the capstan or the steam winch on the "Celtic Chief" were used for the purpose of hauling in the double luff, I certainly could take for granted that there was no heavy strain on it or else it would have been left to the capstan. It may be more powerful on that winch. I know how much that winch could lift because we tried that the biggest part of Tuesday, Tuesday night, the whole Wednesday, and part of Wednesday night, and I know that winch couldn't lift no more than about a half a ton at the most.

Q. Anything else? How would that effect the question?

A. Well, that shows the proof that it wasn't anywhere near the tensile strength of that eight-inch hawser, even. The preventer, as I have stated had nothing to do with the tensile strain of that ten-inch hawser.

Q. Why not?

A. Because it is impossible to reinforce, as counsel states, a manilla hawser with wire rope. You may do it for a second, but not any continuous strain, it's

(Testimony of J. F. Haglund.)

going to wear, and I never saw that reinforcement changed at any time after it was put on that night. It was merely put on for a preventer in case the manilla hawser parted that they won't loose the whole wire overboard.

Q. Now, taking your experience into consideration and the handling of tackles, their uses, the approximate powers that you can get out of them and your statement [3084—2253] that that winch at the most could lift not more than half a ton, I'll ask you if you can give us approximately how much of that power would be used by any friction or resistance in the operation of the tackle?

Mr. WEAVER.—Object to that, if your Honor please, as calling for an opinion of the witness in matters he is not an expert in; further, that he is not shown to be competent.

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The COURT.—I will require a better showing of qualifications, Mr. Warren.

Mr. WARREN.—I'm satisfied to let that question rest that way.

Mr. OLSON.—Then I submit there is only one thing can be done and that is that the objection be sustained.

The COURT.—I will so rule.

Mr. WARREN.—I think nevertheless, your Honor, the witness is qualified now to go back to the question as to what, in his judgment, pulled the vessel off the reef. I ask now that he be allowed to answer that question.

(Testimony of J. F. Haglund.)

Mr. OLSON.—Well, of course, we renew our objection.

Mr. WEAVER.—We renew our objection to that on behalf of the Miller Salvage Company.

Q. Captain, do you know anything further respecting the Miller line and tackles particularly during the time from eleven o'clock on Wednesday night, about which you have not yet testified?

A. I know by the way the winch was running on the last hauling that there was much less than a half a ton weight on that tackle because it'd come in much more freely than they did, than hoisting the fertilizer out [3085—2254] of the hole. That's how I know there must have been a great deal less than a half a ton put on that winch at that time between eleven and half past eleven.

Mr. WARREN.—Now I think, your Honor, that that is sufficient. This witness knows the maximum power which might be exerted.

Q. How many times that night after eleven o'clock, did you observe the Miller line over the stern?

A. A few times, I don't know the number of times.

Q. About how frequently?

A. Oh, that I couldn't tell.

Q. Was there, at any time, any change in its position from what it was in at eleven o'clock as you have already testified? A. Not to my knowledge.

Q. If there had been any change would you have known it?

Mr. WEAVER.—I object to that as leading.

The COURT.—I think it is leading. I sustain the objection.

Mr. WEAVER.—I further object to it on the

(Testimony of J. F. Haglund.)

ground that it calls for an opinion of the witness.

Q. Where were you, Captain, during the evening after eleven o'clock? What part of the ship?

A. Anywheres from amidship aft, there around the main hatch a great deal, and I was also up on the poop around the Inter-Island lines; stationed men there with axes to be ready to cut when orders were given.

Q. Did you, at any time, observe any change of condition—

Mr. WEAVER.—One moment. I object to that as an indefinite question and unintelligible.

The COURT.—I assume the question refers to the Miller line.

A. I did not.

Q. Could there have been any change without your knowledge? [3086—2255]

Mr. WEAVER.—I object to that, if your Honor please, for the same reason. Object to it as calling for a conclusion of the witness and also leading.

The COURT.—That question, it seems to me, also to be leading. The proper thing would be to show just what the witness did observe during these different times and the different places.

Q. Then, I'd ask you, Captain, what was the greatest interval of time during which you were absent from the poop deck after eleven o'clock that night?

A. I was around the main hatch quite frequently during that time between half-past eleven and eleven o'clock and observed that winch maybe just as many times as I was down on the main deck, and, of course, the number of times, I cannot state.

Mr. WEAVER.—I move the answer be stricken

(Testimony of J. F. Haglund.)

out as irresponsible to the question.

Mr. WARREN.—No objection.

The COURT.—So ordered.

Q. The question is directed to the length of time which length of time you were absent from the poop deck and the point being your opportunity for observing the Miller line over the stern.

A. The Miller line over the stern, I didn't observe as often, by any means, as I did the winch, the power that was put on the line.

Mr. WEAVER.—I move that be stricken out as irresponsible to the question.

I withdraw my objection.

Q. Now, I'll ask you what was the greatest interval of time in which you might say you did not observe the Miller line over the stern? [3087—2256]

A. I could not state the interval.

Q. Approximately, you don't have to give us the number or minutes or seconds?

A. Even that I couldn't state correctly. I didn't time myself, how many times I looked over the stern and observed the Miller's line leading over the stern down to the water, but what I claim is I saw the power quite frequently that was put on them lines, on the tackles to tighten that line and I know how little could be exerted on that pull.

Mr. OLSON.—Move to strike on the ground it is a conclusion of the witness and furthermore, it is not responsive; the last statement made.

Mr. WEAVER.—I join in that motion.

The COURT.—I sustain the motion as to that part of the answer which is a conclusion in regard to the small amount of power.

(Testimony of J. F. Haglund.)

Q. Could you state, Captain, whether or not the greatest interval would be nearer one minute than fifteen minutes?

A. Observing the line over the stern?

Q. Yes, between times of observing that line over the stern.

A. That may have been nearer fifteen minutes than one minute, I admit that; but how much nearer, that I couldn't state.

Q. From your experience in handling lines, tackles, and so forth, of the line under consideration, would it, in your judgment have been possible for any material change of condition of that Miller line to have taken place within fifteen minutes?

Mr. OLSON.—Object to the question on the ground that the witness is not qualified to answer, it not appearing that he knew all the conditions that existed with reference to that line; furthermore, on the ground it [3088—2257] is calling for a conclusion of the witness when no proper foundation has been laid.

Mr. WEAVER.—I join in that motion.

The COURT.—Objection is overruled.

A. It would have been so small that it would have been hardly noticeable.

Q. How's that?

A. It would have been so small that it would have been hardly noticeable.

Mr. WARREN.—Now I submit that the witness has satisfactorily covered the ground. He's testified that possibly the longest interval would be fifteen minutes but within that time no noticeable change could have been brought about.

(Testimony of J. F. Haglund.)

The COURT.—I will allow the question.

Mr. OLSON.—What is this, the opinion of the witness as to what was the operating force in bringing off the “Celtic Chief”?

The COURT.—Yes.

Mr. WEAVER.—Of course, we make the same objection to that.

Mr. WARREN.—The question was, Captain, what, in your opinion, was the cause of the floating of the “Celtic Chief,” stating upon what you base your opinion, including your own experience in salving vessels, in maritime matters, and in navigation, as well as your knowledge of the facts, it being understood that it is to be your personal knowledge of the facts.

Mr. OLSON.—To which we interpose the same objection, if the Court please.

Mr. WEAVER.—The Miller Salvage Company interpose the objection heretofore.

Mr. OLSON.—The objection is overruled, as I understand it? [3089—2258]

The COURT.—Yes.

A. Well, I would state that, in my opinion, it was due to different agencies applied out at the “Celtic Chief,” commencing with the tug “Intrepid” and the “Huki Huki,” deserve some credit for assisting in keeping that ship end on to the reef.

Mr. OLSON.—Now, if the Court please, I move to strike the last two statements on the ground that the witness is testifying to matters not within his own knowledge.

Mr. WARREN.—No objection to that.

(Testimony of J. F. Haglund.)

Mr. OLSON.—As I understand it, that statement is stricken?

The COURT.—Yes.

Mr. OLSON.—All the testimony with reference to the "Intrepid" and "Huki Huki"?

The COURT.—I so ordered.

A. Then I will confine my answer to the power that was exerted by the Inter-Island Steamship Company's steamers, the lightering of the cargo out of the ship by Miller Salvage Company as well as the Inter-Island Steamship Company, and the amount of strain, whatever that would be that was put on the Miller anchor. It was an additional help.

Q. Can you state more particularly the proportion which, in your judgment, was contributed by the Miller Salvage Company anchor?

Mr. WEAVER.—We object to that, if your Honor please, as calling for the opinion of the witness where it is shown that he has not sufficient knowledge of the facts on which to base the conclusion.

The COURT.—I will allow the question, it being understood that the intention is to elicit an answer respecting the degree and not the mathematical portion [3090—2259] of power exerted or what was rendered by the Miller Salvage Company, the Miller Salvage anchor and apparatus.

Mr. WARREN.—That is understood, your Honor.

Mr. WEAVER.—Of course, that's understood. We make the same objection to the question even as modified.

A. In my opinion and to my best judgment—

Mr. WARREN.—The objection is overruled?

The COURT.—Yes.

(Testimony of J. F. Haglund.)

A. In my opinion and to my best judgment, it would not be more than any of the Inter-Island steamers individually was exerting on the "Celtic Chief."

Q. I want to hand you a small photograph, Captain, and ask you if you can identify it.

(Mr. Warren hands witness a snapshot.)

A. Yes.

Q. Please state what it is.

A. It is a photograph I took myself of the mizzen-mast of the "Celtic Chief."

Q. At what part of the mast?

A. Right above the poop, the level with the forward part of the poop.

Mr. OLSON.—Before it is offered in evidence, I'd like to ask a question or two.

Q. Captain Haglund, when did you first *not* that mast, take any observation of that mast, examine it?

A. After the "Celtic Chief" was lying in at the Hackfeld wharf.

Q. That's the first time you examined the mast?

A. That is the first time I examined it particularly.

Q. That was after the "Celtic Chief" came off the reef? A. Yes.

Mr. WARREN.—Then I'll ask some more questions. Did you examine it at any time before she came off the reef? [3091—2260]

A. I couldn't examine the mast particularly because there was always a line around it in that particular spot.

Q. What line was around it?

A. During the time I was aboard the "Celtic Chief" there was a twelve-inch hemp rope, not a

(Testimony of J. F. Haglund.)

manilla hawser, hemp rope, around the mast and lead to the outside of the "Celtic Chief" quarter, to which the "Mauna Kea" or steamer "Helene's" line was attached.

Mr. WEAVER.—What do you mean by that particular spot?

A. That dent on the mast.

Mr. WARREN.—Make a cross on this photograph indicating what you mean by that particular spot.

(Witness marks on photograph.)

Q. Now, do you know whether or not, do you know what line was on that mast at this spot before the hemp hawser was there?

A. A twelve-inch manilla rope—

Mr. OLSON.—Now, I move to strike on the ground it is hearsay.

The COURT.—Motion granted.

Mr. WARREN.—You don't know yourself?

A. I did not see that, that was parted.

Q. Well then, I'll call another witness on this point, your Honor. Cross-examine.

Cross-examination on Behalf of Libellee.

Mr. OLSON.—Q. In testifying concerning your experience in salvage operations, you mentioned the "Chyso Maru," did you not, Captain? A. I did.

Q. The "Chyso Maru" used her engines, did she not, to a certain extent during the course of those operations in attempting to float the "Chyso Maru"? [3092—2261] A. She did at times.

Q. When you testified that the "Mauna Kea" had to leave on her regular schedule at twelve o'clock to carry mail, passengers, and freight, did you mean that twelve o'clock on Tuesday was the time on which

(Testimony of J. F. Haglund.)

she would regularly have left the Port of Honolulu if it had not been for the "Celtic Chief" operations?

A. I don't remember whether her schedule had been changed from twelve to ten at that time, but it was either twelve or ten in the forenoon.

Q. When you say she had to leave on her regular schedule to carry mail, passengers, and freight, you mean that was her regular schedule time on which to leave. When you speak of mail you don't speak of any knowledge of the mail contract? A. I do.

Q. Do you know the contents of the mail contract? Have you read it? A. Now?

Q. Do you know whether that contract is in existence? A. Not that contract.

Q. Did you know it was in existence at the time?

A. I did.

Q. Do you know the terms of the contract?

A. I know there is a penalty.

Q. Do you know there is a penalty?

A. I do, but I couldn't state it in court here unless—

Q. That's all I want to know. When did you first come out to the scene of the "Celtic Chief" operations on Tuesday? A. On Tuesday?

Q. Tuesday.

A. Shortly before seven o'clock in the morning.

Q. A little before seven o'clock?

A. A little before seven o'clock.

Q. How did you get out there? [3093—2262]

A. Went out on the steamer "Helene."

Q. Now, when you arrived there what did you do, personally?

(Testimony of J. F. Haglund.)

A. I observe everything that was done by the steamer "Helene."

Q. I'm asking you what you did.

A. I'm telling you what I did.

Q. All right, I'll put it in a way that you can understand then, Captain. When did you first arrive, the "Helene," after coming out to the scene of the "Celtic Chief" operations?

A. As near as I can remember, shortly before eight o'clock; to the minute I couldn't state.

Q. What did you do?

A. Went aboard the "Mikahala" first.

Q. You went aboard the "Mikahala"?

A. Yes.

Q. Shortly before eight o'clock, did you say?

A. Yes.

Q. And from the "Mikahala"? How long did you stay on the "Mikahala"?

A. I don't remember; just a few minutes.

Q. And then where did you go?

A. On board the "Celtic Chief."

Q. And how soon after that was it before you left the "Celtic Chief" again?

A. That I don't remember.

Q. Well, did you leave her again on Tuesday?

A. I couldn't possibly state that even.

Q. When did you next go aboard the "Helene"?

A. I don't remember the next time. I was aboard in the "Helene" during Wednesday evening.

Q. How long on Wednesday evening?

A. Oh, I may have been there anywheres from ten

(Testimony of J. F. Haglund.)

to twenty minutes, maybe. I am not positive.

Q. What were you doing on the "Helene" then?
[3094—2263]

A. I was talking regarding the signals to be fired on the "Celtic Chief" when she was floated.

Q. Did you go aboard the "Helene" after that?
Oh, with whom did you talk? A. Captain Nelson.

Q. Did you see Captain Nelson the moment you stepped on board. A. I did not.

Q. Where was he? A. On the lower bridge.

Q. Did you step up on the lower bridge?

A. I did.

Q. Did you talk to him from ten to fifteen minutes?

A. I went into his room.

Q. Did you ask him to go into his room?

A. I did.

Q. How long were you in his room?

A. I don't remember.

Q. Ten or fifteen minutes?

A. The biggest part of the time I was on the steamer.

Q. When you came out of his room what did you do?

A. I looked around, looked at the lines and then went back on the boat again.

Q. And that's all you did?

A. I don't know if that's all I did. I don't remember exactly what I might have done besides that.

Q. When you came aboard you went to the lower bridge and went into his room? A. Yes.

Q. And you were there the biggest part of the time?

(Testimony of J. F. Haglund.)

A. Yes.

Q. And when you left the captain you took a look at her lines? A. Yes.

Q. Where? A. At the stern.

Q. After having taken a look at the lines where did you go?

A. I had to go down on the lower deck for to get in the boat again.

Q. Having taken a look at the lines in the stern you went [3095—2264] down to the lower deck?

A. Lower deck where the "Helene's" towlines were fast.

Q. You went down to the low deck in order to see those lines? A. I did.

Q. And then you went to your own boat?

A. I did.

Q. And went to the "Celtic Chief"?

A. No, I did not.

Q. Where did you go then?

A. To the "Mikahala."

Q. And was that the last time you went on the "Helene" that night? A. Yes.

Q. And that was the first time you went on the "Helene" that night? A. That night, yes.

Q. Now, during Wednesday afternoon, were you on the "Helene"?

A. I couldn't tell, I don't remember.

Q. Were you on the "Helene" any time during the daytime?

A. I was aboard the "Helene" at some time, I went sometimes to get my meals, but what time of the day

(Testimony of J. F. Haglund.)

I am not prepared to state.

Q. That's where you took your meals?

A. Sometimes on board the "Mikahala," sometimes on the "Helene."

Q. At any time you went aboard to take your meals at the "Helene," what did you do? Simply take your meal and go away?

A. I looked at the strain on her towline and also her anchor chains.

Q. How many times, can you state you made such an observation? A. From the time I was there.

Q. And how many times?

A. That I couldn't state.

Q. Did you take your meals any place else except the "Helene" and the "Mikahala"?

A. That's the only two boats I had out there.
[3096—2265]

Q. The "Likelike" wasn't there?

A. Not before Wednesday noon.

Q. Did you take any meals on the "Mikahala"?

A. I did.

Q. Do you know whether you took more of your meals on the "Mikahala" or the "Helene"?

A. I have already stated I don't remember that, the number of meals I took on the "Mikahala" and the number of meals I took on the "Helene."

Q. Were you on board the "Helene" for any other purpose than for taking your meals?

A. I went aboard for the purpose to look at her anchor chain.

Q. I want to know if you were on board at any other

(Testimony of J. F. Haglund.)

time for any other purpose?

A. I don't remember, Mr. Olson, whether I went on board the "Helene" at any other times but at meal times.

Q. Now, were you aboard the "Helene" after you left her shortly before eight on Tuesday morning, during Tuesday?

A. I don't remember whether I was.

Q. If, so, it was when you went aboard to take your meals? A. If I was it was at meal-time.

Q. Where did you take your breakfast that morning?

A. I took it aboard the "Helene" before I left her.

Q. And where was the "Helene" at the time you were eating breakfast?

A. She was moored outside the "Celtic Chief."

Q. Was that after you had arrived?

A. Yes, shortly.

Q. Had the "Mauna Kea" yet left?

A. May be half-past seven, somewheres around eight o'clock after we got out there. [3097—2266]

Q. Now, did you go aboard the "Helene" Tuesday night? A. I don't remember.

Q. Is that because you don't remember whether you were there to eat a meal there?

A. Our last meal was somewheres around five o'clock. I may have been aboard the "Helene."

Q. You may have been aboard to take your evening meal? A. I may have.

Q. But you were not aboard of her at any other time? A. That I can't remember.

Q. You don't, at present, remember. Were you

(Testimony of J. F. Haglund.)

aboard on Tuesday night at any other time than the possible time of going aboard to get your evening meal? A. I don't understand that question.

Q. As I understand, it's possible that you went aboard the "Helene" Tuesday night to get your supper? A. It's possible.

Q. Now, I want to know if you went aboard again later on Tuesday evening, after you had your supper, at any other time?

A. Not that I remember. I might have been there but I wouldn't say so.

Q. Where were you when the "Helene's" anchors were laid? A. On the bridge with the captain.

Q. Of the "Helene"? A. Yes.

Q. Where were you when the "Helene" finally hove in on her lines? A. On the bridge.

Q. You were still on the same place. By what time was it that the "Helene" had gotten into position and gotten her line taut as you have testified?

A. I am no able to state that correctly to the minute.

Q. Well, have it as near as you can state it?

A. I know she was moored and the line taut before 8 o'clock. [3098—2267]

Q. That is before you left her?

A. Before I left her.

Q. And when you went over to the "Mikahala"?

A. Yes.

Q. Now, do you remember any particular after that when you noticed that the "Helene's" anchor chain were hove any more than they were up to the time

(Testimony of J. F. Haglund.)

that you left the "Helene" on Tuesday morning, that you observed? A. After that?

Q. After that. A. I couldn't state the time.

Q. Well, you don't remember, do you?

A. I do not remember.

Q. You don't remember having seen them heaving in on those anchor chains thereafter?

A. Yes, I've seen it.

Q. Let us have a statement—

A. When I was aboard for my meals. I have already testified that I observed the towlines as well as the chains and they put steam on the winch to see if there was any slack.

Q. Did you go down there to see if there—

Mr. WARREN.—I object to that; the witness was not yet through.

Q. Have you finished your previous answer?

A. The way you go at me I don't know what I did answer.

Q. Let's have as much more of your answer as you choose to give to my previous question, if you went over to see if they could get any more slack. Have you anything further to say in addition to that answer? A. No.

(Question read.)

A. Down where. [3099—2268]

Q. Where the engine was being operated?

A. I saw that from the bridge.

Q. Did you direct them to heave in on the anchor chain at any time that you were aboard for the purpose of taking your meals?

(Testimony of J. F. Haglund.)

A. I asked Captain Nelson to see if there was any more of that chain to be had.

Q. When did you do that?

A. That was I already stated at the time I was aboard for my meals.

Q. Did you do it each time?

A. I don't remember how many times I was aboard the "Helene."

Q. Did you do it each time that you did go aboard?

A. I did.

Q. Now then, will you state how much chain was gotten in during those times?

A. At the time when I observe it?

Q. Yes.

A. Maybe only a link, maybe less than half a link.

Q. Is a link at a time the most?

A. That's the most, the very most.

Q. How long is a link?

A. That inch and a half chain, I don't remember exactly, but so near as I remember about seven inches.

Q. Now Captain, you know, do you not, that there was a swell running at all times the "Helene" was out there? A. That I do, yes.

Q. And that would have some bearing upon the question of whether or not more chain could be taken in by the winch, would it not?

A. To a certain extent, yes.

Q. How much do you suppose the "Helene" would heave under one of those larger swells that *you spoken of*? [3100—2269]

A. How much she would heave?

(Testimony of J. F. Haglund.)

Q. Yes. Raise the ship. How much would she heave? How much would she be lifted by the swell?

A. It is pretty hard for me to state the number of inches and feet.

Q. I want the best judgment that you have on the subject, if you can't give us exactly, give it to us approximately?

A. Maybe anywhere from a foot to five, six, or seven feet, or eight feet; maybe more than some of the heavier swells.

Q. So then, when you testified on direct that whenever there was any slack the "Helene" would heave in on her anchor chains little by little and get in a little at a time, you were then referring to the times that you were aboard and *actual* observed—

A. Yes.

Q. The anchor chain being heaved in upon?

A. I wouldn't testify to anything that I didn't see.

Q. You don't know what day that was?

A. They have orders from me—

Q. But do you know of your own knowledge?

A. I never asked them how many fathoms they got in.

Q. And you don't know?

A. I don't know when I wasn't there, no.

Q. I'll hand to you, Captain, a piece of wire line which is marked Claimants' Exhibit, Henry B., and ask you to state what in your judgment is the size of that wire line?

Mr. WARREN.—I don't understand that this is yet in evidence, your Honor. I'm going to object to this being referred to unless it appears what it is.

(Testimony of J. F. Haglund.)

Mr. OLSON.—I offer to show subsequent in my case that this particular line is a part of one of the wire lines [3101—2270] used by the “Arcona” in her pulling operations. Upon that offer to connect I now ask the witness if he will state what in his opinion is the size of that wire line.

Mr. WARREN.—Same objection, your Honor. I think it’s not proper.

The COURT.—I allow that question subject to later proof being offered that this is the “Arcona” line.

Q. Will you state what in your opinion is the size of this wire line?

A. A sailor will call it a four-inch wire, but in a ship chandler’s store, it would be called according to its diameter.

Q. What is its diameter?

A. An inch and a quarter.

Mr. OLSON.—I offer this to be marked for identification.

Mr. WARREN.—I object to that, your Honor. It is not proper to offer this thing in evidence at this time for any purpose.

(Wire rope received and marked Libellee’s Exhibit 7 for identification.)

Q. Now do you mean— That’s allowed, is it, your Honor?

The COURT.—Yes.

Mr. WARREN.—I want that in the record, that counsel must include in his offer to prove which of the two lines this particular piece is a part of.

Mr. OLSON.—I’ll do that also.

(Testimony of J. F. Haglund.)

Now, then, Captain Haglund, are you prepared to state that the wires which were used in the towing operations by the "Arcona,"—I won't call them towing operations as you don't call them such.

A. That's the wrong name for it.

Q. Now just a second. Are you prepared to say, Captain Haglund, that neither of the lines which the "Arcona" had [3102—2271] attached to the "Celtic Chief" was as large as that? A. I do.

Recess.

Mr. WARREN.—I'd like with the consent of counsel and the Court to ask one or two more direct questions.

Mr. OLSON.—With reference to the "Mauna Kea's" rope.

Mr. WEAVER.—We consent on behalf of the Miller Salvage Co.

Mr. WARREN.—Since the other day, Captain, have you been able to get a sample of new twelve-inch rope of the kind used by the "Mauna Kea"; is this the sample, Captain? (Hands witness piece of rope.) How does this sample with the line of the "Mauna Kea" when new?

A. That is about as near as you can possibly get it.

Mr. WARREN.—I'd like to offer this in evidence, your Honor.

Mr. OLSON.—I have no objection.

Q. A twelve-inch manilla hawser, is it, Captain?

(Rope received, marked Libellant's Exhibit "P.")

Mr. WARREN.—That's all.

Mr. OLSON.—Are you still prepared to say, Captain Haglund, that this piece of wire rope that I

(Testimony of J. F. Haglund.)

showed you could be a part of one of the lines used by the "Arcona"?

A. It may have been a part of it.

Q. It may have been a part of the one that belongs to the "Celtic Chief," isn't that so?

A. That may be a fact. Whatever it is—

Q. Never mind that's all I want, Captain Haglund, on that point. Was the "Arcona" line lying forward or back of the position of the "Helene"?

A. Slightly forward.

Q. Slightly forward. When you say slightly, how many fathoms would you say, or feet. *I now* speaking of the [3103—2272] stern of the "Arcona" with respect to the stern of the "Helene"?

A. Maybe ten, maybe fifteen, feet. I couldn't say exactly to the foot.

Q. That is your best judgment?

A. To my best judgment.

Q. Hardly more than fifteen feet?

A. Not more than fifteen feet.

Q. Hardly more than fifteen feet?

A. Not more than fifteen feet.

Q. If you testified on direct that it was twenty-five feet ahead of the "Helene," then that is not correct? A. If I did, that's too much.

Q. Then you were not stating accurately the distance from the "Arcona" and the "Celtic Chief" as compared to that of the "Helene," as you testified on direct?

A. To my best judgment, it would be at the least fifteen feet ahead.

Q. Why did you say twenty-five feet on direct?

(Testimony of J. F. Haglund.)

A. I don't know that I said it, but if I did say so, it's a little too much.

Q. When you were aboard the "Arcona," did you examine the way in which the lines were made fast on board of the "Arcona"? A. I did.

Q. Where was the line which went to the starboard side of the "Celtic Chief" attached to the "Arcona"?

A. To her port quarter bitts.

Q. Her port quarter bitts?

A. On the afterdeck.

Q. And where was the line attached which went to the port side of the "Celtic Chief"?

A. Attached to the "Arcona's" starboard quarter bitts, [3104—2273] right opposite.

Q. When was it that you ascertained that?

A. On Wednesday evening.

Q. What time were you aboard?

A. I couldn't approximately state; somewheres around between nine o'clock.

Q. It wasn't dark, was it not? It was already dark, wasn't it?

A. Oh, yes, it was after dark.

Q. Now, just how were those lines attached to the bitts? A. Turned around the bitts.

Q. Only around it?

A. Only around the bitts, yes.

Q. About how far forward of the stern of the "Arcona" are those bitts on both sides?

A. That I couldn't possibly state.

Q. Can't you state approximately? A. No.

Q. You don't know whether it is a hundred and fifty feet or fifty feet?

A. It is less than fifty feet.

(Testimony of J. F. Haglund.)

Q. That's what I want to find out?

A. Less than fifty feet.

Q. Less than twenty-five feet?

A. Of course, I couldn't state that correctly.

Q. Somewheres between twenty-five and fifty feet?

A. Somewheres around there.

Q. About how much of the wire do you think was used in being wound up?

Mr. WARREN.—Which wire?

Q. We'll take the wire going to the starboard side of the "Celtic Chief"?

A. On the "Arcona's" bitts, you're referring to.
[3105—2274]

Q. Yes. How much of the wire was taken up there?

A. I don't remember the turns around the bitt.

Q. Did you observe whether the whole of the wire was used or whether there was some part of the wire loose?

A. There was some wire on the "Arcona."

Q. There was some wire left on the "Arcona"?

A. Left on the "Arcona."

Q. And was the same true of the other side?

A. Yes.

Q. Ten or fifteen feet? A. That I don't know.

Q. Well, approximately. You examined those wires?

A. No, I didn't examine them.

Q. You saw there was some loose end?

A. I saw there was some loose end. Whether it was five fathoms or a hundred and five—

Q. It looked like it might be five or six fathoms?

A. I couldn't state how much there was. I know how much it would take to make it fast around the bitts, if I had counted the turns.

(Testimony of J. F. Haglund.)

Q. When you say it might have been twenty-five fathoms or more, do you mean to say that it was your impression it was quite a little bit?

A. I couldn't tell you whether it was small or large.

Q. Do you remember there was any?

A. That I don't know either.

Q. Why did you say there was a loose end?

A. I didn't see it if there was.

Q. Why did you testify about there being a loose end there, if you didn't see it?

A. There must be a loose end somewhere.

Q. Now, which wire was it that the "Arcona" supplied, the wire that went to the starboard, or the one that went [3106—2275] to the port side?

A. The "Arcona" supplied both of them.

Q. Don't you know that one of the "Celtic Chief" wires was in use?

A. Not on board of the "Arcona."

Q. Don't you know that one of those wires was furnished by the "Arcona," one of the wires that went to the "Celtic Chief"? I'm asking about the only one, the whole one that was supplied by the "Arcona"? A. The whole wire?

Q. Yes.

A. That was the one leading from the "Arcona's" port quarter to the starboard side of the "Celtic Chief," made fast amidships.

Q. Was that between a hundred and twenty and twenty-five fathom line?

A. I don't know. Wires come in all lengths according to the order.

Q. You have no opinion then, how long they were?

(Testimony of J. F. Haglund.)

A. I don't know.

Q. Now, was the "Arcona" astern or forward of the position of the Mikahala"?

A. Forward of the "Mikahala."

Q. About how much? I'm speaking now of the stern of the "Arcona" with reference of the stern of the "Mikahala"?

A. The stern of the "Arcona" was approximately abreast of the bow of the "Mikahala," if anything a little forward.

Q. And what was the length of the "Mikahala"?

A. The "Mikahala" was a hundred and forty-seven feet, if I remember correctly.

Q. This sample of the— What were you going to say, Captain?

A. I think that's right, the length of the "Mikahala" is [3107—2276] correct.

Q. This sample of the "Mauna Kea's" line that you produced and which been introduced in evidence as an exhibit, and is marked Libellant's Exhibit 8, where did you get that sample?

A. I got that out the Inter-Island warehouse from the line that is coiled up there.

Q. Are you the custodian of the wares in that warehouse? A. I am.

Q. Do you know whether or not that piece from which that was cut by you a day or two ago has been in that warehouse ever since the "Celtic Chief" operation? A. Yes.

Q. It has. What was the length of that piece, I'm speaking now of the whole rope from which this sample was taken?

A. The length of it now or when it came in there?

(Testimony of J. F. Haglund.)

Q. When it came into the warehouse.

A. Well, approximately as near as I can remember about six hundred feet.

Q. Now, what the length of the piece from which you took this sample?

A. About three and thirty, I think.

Q. What was done with the rest of it?

A. It's down there.

Q. Now—Oh, that's a fact, is it?

A. That's been used for mooring lines.

Q. By the Inter-Island Steam Navigation Co.?

A. By the "Mauna Kea" and the "Claudine."

Q. What's become of the "Mikahala's" line?

A. I don't know.

Q. What's become of the "Likelike's" line?

A. I don't know, either. [3108—2277]

Q. What's become of the "Helene's" line?

A. That's it. That's the one of the "Helene," the same one that was used by the "Mauna Kea" and the bridle of seven-inch was attached to that from the "Helene," two parts.

Q. Now, do you remember what kind of a line the "Intrepid" was towing with?

A. Yes, I remember.

Q. What kind of a line was it?

A. Manilla hawser.

Q. And the size?

A. I should judge about ten inches, as near as I can.

Q. About a ten-inch manilla hawser?

A. With a piece of wire spliced to the end of it with an eye in it.

(Testimony of J. F. Haglund.)

Q. And that wire was attached at the "Celtic Chief" end, was it not? A. Yes.

Q. What was the size of that wire?

A. I should judge about an inch in diameter so near as I can remember.

Q. And what was the length? Rather, I should say, what was the distance between the stern of the "Celtic Chief" and the "Intrepid," while the "Intrepid" was attached?

A. A little bit less than the "Mikahala's."

Q. And that would be how many feet about?

A. May be four hundred and fifty; something like that.

Q. About four hundred and fifty feet?

A. About that; less than five hundred any way.

Q. You didn't observe the "Intrepid," did you, on Monday? A. I did.

Q. What? A. I did.

Q. When?

A. I observed her in the morning after the fog; all the mist cleared away [3109—2278] and I also observed her on Monday evening when I went out there on the launch.

Q. Your observation of her in the morning was from where? A. That was in, from the wharf.

Q. Now, what was the condition of that manilla hawser with reference to its being taut on Tuesday and Wednesday morning?

A. Well, it was about as taut as the "Intrepid" could make it by towing.

Q. I don't know how taut the "Intrepid" could make it by towing and so I want to find out.

(Testimony of J. F. Haglund.)

A. There was more or less sag in it, of course.

Q. What?

A. There is more or less sag to it at times. It would touch the water in a bight.

Q. It would touch the water?

A. Might touch the water in a particular spot at all times.

Q. You are not prepared to say that the "Intrepid," at any time she was pulling, kept that line out of the water are you?

A. I wouldn't like to say so.

Q. Do you know the horse-power of the "Intrepid," approximately?

A. No, I've forgotten now. I have known, but I don't remember.

Q. You know that she was not using an anchor, do you not?

A. Not using an anchor, no; not to my knowledge.

Q. Did you examine the sea-bottom around the "Celtic Chief" in any way?

A. I did not, only what I saw about the mixtures of white or coral mixtures floating up along the west side of the "Celtic Chief." That's all the examination I made.

Q. You know, do you not, Captain Haglund, that coral sometimes is comparatively soft, do you not, as compared [3110—2279] with rock? A. I do.

Q. As a matter of fact it can be cut afloat rapidly, can it not, and is sometimes cut out in chunks with knives?

A. Yes, I've see that soft coral, but I don't think the coral was as soft as that because the discolora-

(Testimony of J. F. Haglund.)

tion of the water was very slight.

Q. You think that's a reason for assuming that that coral was not soft, because the discoloration was not slight? A. Yes, sir.

Q. Who was with you in that small boat when you went over to the "Arcona" on Wednesday night and rode around to, around her stem and took note of her anchor-chains?

A. Just the boat's crew of natives, Hawaiians.

Q. I don't know, but think that I'd like to get the names of all of them?

A. I couldn't possibly give you that.

Q. Who were they? Were they from the—

A. I couldn't possibly tell you now whether it was the crew of the "Helene" or the "Mikahala."

Q. Do you know whether it was one of the two?

A. Oh, certainly it was one of two.

Q. And the only persons who observed those anchor-chains, as far as you know, at the time that you said you saw them, was yourself and these members of the boat crew whose names you cannot now give, is that right? A. That's right.

Q. Is there any way in which you could give me the names of any one of those men? Refresh your memory on that point.

A. I couldn't give you, from my memory because I don't know who they were.

Q. Is there any way in which you could obtain their [3111—2280] names? A. I might.

Q. I'll request you so to do.

A. I can't say that I can or not.

Q. I'll ask you that you attempt to do so. I'd like

(Testimony of J. F. Haglund.)

to have those names. A. I will if I can.

Q. Where were you during the time that the "Celtic Chief" was perceptibly moving. I mean when it was observable from the ship itself from the motion of the ship itself, that it was coming off?

A. I was by the "Helene's" line, towline.

Q. And where was that attached?

A. Attached to the mizzenmast.

Q. And you were at the mizzenmast then?

A. Closer aft of it, yes.

Q. That's on the main deck, is it not? A. No.

Q. Where? A. Quarter deck, on the poop.

Q. On the poop itself. Were you there from that time on until the "Celtic Chief" came off?

A. From what time?

Q. From the time that she began to move perceptibly until the "Celtic Chief" came off?

A. Yes, I didn't go down the main deck after that.

Q. How near is that mast to the break of the poop?

A. Maybe just a few feet; I don't know, exactly as I measured it. Maybe two or three feet, maybe little over.

Q. It was at least two feet from the break of the poop?

A. At least two feet from the break of the poop.

Q. And how far from the foremast, part of the stern? [3112—2281]

A. Fifty-five or sixty feet, I should judge.

Q. Fifty-five or sixty feet? A. About that.

Q. Now, what were you doing there? What was your purpose in standing there alongside the "Helene's" line?

(Testimony of J. F. Haglund.)

A. In readiness to cut, have them cut.

Q. Where was it cut as a matter of fact when it was cut?

A. It was cut about, so near as I can tell, about a third of the way from the mizzenmast to the stern of the "Celtic Chief." That's approximately.

Q. Do you mean a third of the way from the mizzenmast? A. From the mizzenmast.

Q. So that it was about two-thirds of that total distance from the stern? A. About.

Q. And you directed that operation, did you?

A. Yes, I directed it and I also had an axe in my own hand.

Q. And did some of the chopping?

A. And did some of the chopping.

Q. It was your purpose to avoid any trouble and that is why you were so careful to stand by it to see?

A. Exactly.

Q. How long was it that the ship was moving this way before she was afloat that you were standing there looking at that line?

A. How long she moved?

Q. How long was it that she had been moving perceptibly? A. I never timed.

Q. Well approximately?

A. Maybe fully a minute, maybe less than a minute; maybe more than a minute.

Q. That was the length of time that you were standing there?

A. No, until they started to cut.

Q. That isn't the point. You, as a matter of fact, went by that line and stood by in order to cut it as

(Testimony of J. F. Haglund.)

soon as you became aware that the "Celtic Chief" was moving? [3113—2282] A. Yes.

Q. How long was it from the time it began to move perceptibly until it was afloat for the first time?

A. Well, she commenced to move at first, although it was very little, about a quarter to twelve, if I remember correctly.

Q. Quarter of what?

A. About a quarter of twelve, but then she stopped again.

Q. How soon did she begin again?

A. That I don't know exactly. That may have been somewhere around twelve o'clock and may have been after twelve. If I remember correctly, it was after twelve.

Q. Ten or fifteen minutes before she actually came off? A. Maybe about that; maybe a little earlier.

Q. When was it that you took your position with the axe, with your axe there, with reference to the first movement? She stopped, as you say, and she began at a quarter to twelve. Was it after that? Before or after it stopped? A. After the first.

Q. It was afterwards? A. Yes.

Q. Would you say about twelve o'clock, about the time it began to move again?

A. I think it was after twelve.

Q. Well, about how long after?

A. I can't possibly state.

Q. You know it was about fifteen or twenty minutes later, or after, the "Celtic Chief" came afloat?

A. After she was afloat, I looked at my watch.

Q. Do you not know how long you had been stand-

(Testimony of J. F. Haglund.)

ing alongside that rope?

A. I wasn't standing alongside that rope. [3114—2283]

Q. Were you there ready with your axe to see that it was cut?

A. I had men stationed there, maybe fifteen minutes, maybe twenty minutes. I don't remember that length of time.

Q. What were you doing?

A. Observing different things around.

Q. You what?

A. I was observing different things around.

Q. On the poop all the time?

A. On the poop all the time to twelve o'clock.

Q. How about from fifteen minutes to twelve?

A. That I don't remember.

Q. You might have been on the poop that time also? A. I won't say so.

Q. Where was that winch operated that your cargo was being loaded by?

A. Forward of the main hatch.

Q. And the main hatch is where with reference to the poop deck? A. It is forward of the main mast.

Q. Pardon me? A. Forward of the main mast.

Q. It may be, in this case may be approximately sixty feet from the mizzenmast? Sixty feet from the mizzenmast? A. So near as I can judge, yes.

Q. Where was the donkey-engine with reference to the hatch itself; on the side toward the poop deck or on the other side? A. On the forward side.

Q. It was forward?

A. Forward of the main hatch.

(Testimony of J. F. Haglund.)

Q. How wide is the main hatch?

A. I didn't measure it. [3115—2284]

Q. Ten or twelve feet?

A. About that I should judge. I didn't measure it, it may be about that size I should think.

Q. That's the ship's donkey which you're speaking of, isn't it? A. Yes, that's the ship's donkey.

Q. That was on the main deck, was it?

A. Yes, sir.

Q. Now, where is the capstan which was used?

A. That is on the forecastle.

Q. That's up forward, isn't it? A. Yes, sir.

Q. Where was the fall run to that was used, attached to the second luff tackle, when the winch was being used as the motive force?

A. It was run up to that capstan.

Q. Run to the capstan? A. Yes.

Q. While the winch was being used for pulling on that tackle?

A. I understood you to say when the winch was used for pulling on the cargo.

Q. No, while it was used as a motive force for pulling on those tackles. A. Line to the winch?

Q. The winch, yes?

A. On the starboard side of the "Celtic Chief."

Q. Now, that winch was not used, was it after half-past eleven o'clock by the Miller Salvage Company?

A. I couldn't possibly state how it was used up to that time.

Q. Up to half-past eleven?

A. Between eleven and half-past eleven that I'm positive; after that I couldn't state.

(Testimony of J. F. Haglund.)

Q. Now, up to that time, up to half-past eleven, the ship hadn't begun to move, had it? [3116—2285]

A. Not so far as I know.

Q. When was it that you saw this rapid taking in of the line that was attached to the tackles, by the winch?

A. It was between eleven and half-past eleven.

Q. You saw that line being taken in very rapidly by the winch?

A. Not so very rapidly, but more rapidly than when we were hoisting the cargo.

Q. How did it happen that the winch was capable of taking in that line so rapidly at that time if the ship wasn't moving?

A. Because the weight on the fall was less than the weight on them slingload of fertilizer.

Q. That is, when they let it loose from the capstan, the tackles loosened up somewhat, did they, and the fall was then led to the winch and that slack was taken in?

A. I don't know anything about that.

Q. That may have been the case, may it not?

A. It might have been for all I know.

Q. So that as a matter of fact, as far as you know, there was no special resistance while you saw that luff from the fall?

A. Not a great deal. Some resistance; not so great as it was when we were hoisting them slingloads of fertilizer.

Q. Did they get that purchase taut then with that winch? A. Not when I saw it.

Q. But you didn't see it after half-past eleven?

(Testimony of J. F. Haglund.)

A. No, I won't state after half-past eleven.

Q. After half-past eleven there may have been a tremendous power put upon the Miller Salvage tackles so far as you know?

A. It takes longer time than that, Mr. Olson, to put any power on a tackle after this was taken in; that is a treble purchase that [3117—2286] was rigged there.

Q. But after the slack is taken in, Captain Haglund, it's possible then, is it not, to exert an actual force, as much as the motive power is capable of exerting? A. Yes.

Q. Did you go up on the poop at half-past eleven o'clock? A. Oh, I didn't time myself exactly.

Q. Was it about that time?

A. I may have been down on the main deck after that time, but I couldn't possibly state to the minute.

Q. I'm not asking you to state to the minute, Captain. I'm asking you to tell as approximately as you can. A. I have, so near as I possibly can.

Q. About half-past eleven o'clock?

A. Before I only said that I didn't go down on the main deck after that because I'm pretty sure I was down by the "Mikahala's" and the "Helene's" lines.

Q. Where was Pilot Macaulay at the time that you went up on the poop?

A. He was up on the poop deck.

Q. What was he doing?

A. I don't know he was doing anything.

Q. Was he there during the balance of the time you were on the poop deck? A. He was.

Q. Where was Captain Henry?

(Testimony of J. F. Haglund.)

A. I don't know.

Q. Have no idea? Didn't see him?

A. I have an idea where he was, but I didn't see him. He was aboard the ship, I know.

Q. But you didn't see him in evidence?

A. Not at any particular time, no.

Q. Where was Captain Schroeder, the commander of the "Arcona"?

A. He was away aft on the [3118—2287] star-board quarter of the "Celtic Chief." Right aft. I didn't see him, before he came running up, maybe to get in his boat.

Q. Where was the executive officer of the "Arcona"?

A. The executive was standing right by the signals there, close by where he had his signal man stationed.

Q. How near was that to you?

A. Just a few feet.

Q. How long did he stay there?

A. Well, he was on the quarter deck until the "Arcona's" lines was let go.

Q. Did you hear Pilot Macaulay have any words at all with the executive officer of the "Arcona"?

A. I didn't.

Q. Didn't hear any conversation?

A. I may have heard something, but not near enough to hear what he was talking about.

Q. How did you, how were you first able to tell that the "Celtic Chief" was moving at eleven-forty-five P. M. of Wednesday night?

A. By bearing of lights on shore.

Q. Then you couldn't feel the motion?

(Testimony of J. F. Haglund.)

A. Oh, you can feel the motion, but then—you mean motions on the ship before she came off?

Q. I want to know if you could feel the motion of her moving seaward?

A. Not at a quarter to eleven.

Q. When did you first begin to note a seaward motion of the "Celtic Chief" by the feel?

A. That was after twelve o'clock.

Q. After twelve? A. After twelve.

Q. How long did it take for her to come afloat after that?

A. From there? Well, just slowly, maybe a minute, maybe a little more. [3119—2288]

Q. But you never felt her movement at all up to that time, move seaward? There was no apparent seaward motion of the "Celtic Chief" up to that time?

A. Not that you could feel. You could feel her grinding and thumping and rolling considerable, but if you hadn't had any bearing you couldn't possibly know whether she was going astern or not.

Q. What were these bearings that you had ashore?

A. Well, there was lights. I couldn't possibly state which light it *were*. I know the nearest light of my bearing light was a buoy in the channel.

Q. How far away from the "Celtic Chief," approximately? Maybe half a mile?

A. I don't know exactly the distance, but approximately that.

Q. And the other range light that you used?

A. It was over towards Kaimuki way.

Q. That would be a good many miles away, wouldn't it?

(Testimony of J. F. Haglund.)

A. Would be probably four or five miles away.

Q. Was that on shore? A. On shore.

Q. Now, standing on the "Celtic Chief" as you were and using one of the buoy light of the channel as one of your range lights and a light ashore at Kaimuki—

A. I also had the lighthouse and a light in shore.

Q. Well, now, that was a different range, wasn't it?

A. That was a different range.

Q. Referring to your first range, the one that you spoke of first, the buoy light in the channel and the light at Kaimuki, how were you able, standing on the "Celtic Chief," to use those two lights as ranges, if the light at Kaimuki was necessarily considerably higher, above sea-level, I mean?

A. Above sea-level, yes, but I wouldn't be so very much on account of being there near to the buoy; that buoy is probably ten or twelve feet, maybe more, above sea-level. [3120—2289]

Q. And you were about twenty-one feet above sea-level?

A. On the quarter deck, I was, but not on the main deck.

Q. You were standing on the poop deck taking these observations, at a quarter to twelve?

A. I may have took them from the main deck at quarter to twelve.

Q. How high is the main deck above the sea-level?

A. Six or seven feet lower than the poop deck, approximately.

Q. And you're over five feet tall, are you not, Captain; five feet, six or seven? A. Five feet, seven.

(Testimony of J. F. Haglund.)

Q. So you were looking at a level seventeen feet above sea-level, weren't you, standing on the main deck? A. Yes.

Q. Do you mean to tell me in order to see that buoy light you wouldn't—

A. I'm not positive it was Kaimuki on the heights. It might have been Waikiki.

Q. You know it is miles away?

A. I don't know, it's not far away.

Q. You know it is several miles to Waikiki from the point that you were looking from?

A. There is lights all along from Waikiki right in, right near the beach, back of the beach.

Q. Now, which of the range lights was it that you used when you determined, or were able to see that the "Celtic Chief" had moved at quarter to twelve?

A. I could tell by three of them.

Q. And you did, did you?

A. I did as near as I can remember.

Q. Now, where was the lighthouse that you used?
[3121—2290]

A. Just a short distance further away from the buoy.

Q. Little over half a mile?

A. Little over half a mile.

Q. How high is that lighthouse?

A. I don't remember.

Q. You know approximately, don't you? You've seen it a good many times? A. Yes.

Q. Both daylight and at night?

A. I've seen it often enough.

Q. How high was it, approximately?

(Testimony of J. F. Haglund.)

A. About thirty feet.

Q. What was the second light you had as a range?

A. It was in shore.

Q. It was on the shore was it? A. On the shore.

Q. Where was that, at Waikiki or Kaimuki?

A. It was farther in town.

Q. Nearer to town? A. Nearer to town.

Q. Several miles away? A. I couldn't tell you.

Q. Well, it would be more than a mile away wouldn't it? You know it was more than a mile?

A. I think it was more than a mile, but how much more I wouldn't state.

Q. You are pretty sure it was miles from the other light to where you were?

A. I don't know how far in shore.

Q. You are sure it was at least two or three miles?

A. I don't think so.

Q. How far do you think it was?

A. It was only little further, half a mile to the lighthouse. I know the lighthouse ain't two miles [3122—2291] in shore.

Q. Where is it?

A. Just in the harbor. I don't know that in feet.

Q. We're talking about miles, not feet.

A. This harbor is not a mile wide.

Q. Have you no idea?

A. Well, I've got an idea, yes.

Q. Let's have your best idea, a mile and a half or two miles, two and a half miles, or a mile?

A. It may be little over a thousand feet.

Q. From the lighthouse to the shore?

A. To the shore.

(Testimony of J. F. Haglund.)

Q. Less than a quarter of a mile?

A. Less than a quarter of a mile; about a sixth of a mile.

Q. Now, then, that light that you used was considerably farther in shore, wasn't it? A. Yes.

Q. And by that you were able to determine that the "Celtic Chief" was moving, although it was so imperceptible from the standpoint of feeling that you couldn't feel it at all?

A. You couldn't feel it at all. I couldn't make sure she was moving seaward unless I had something to determine that by.

Q. When the "Celtic Chief" came off, I understood you to say on direct examination, that she came within thirty or forty feet of the "Celtic Chief," according to your observation?

A. So near as I can judge.

Q. Of the "Arcona," I mean?

A. That's my best judgment.

Q. You were standing on the poop deck at that time, weren't you? A. I was.

Q. Do you mean on the side of her or astern or, I mean, [3123—2292] yes, astern of the "Arcona"?

A. Yes, astern of her.

Q. So that if she had kept going in that direction for thirty or forty feet more and the "Arcona" had not moved, she would have run into the "Arcona"?

A. I won't say that.

Q. Well, if she was that much astern of the "Arcona"—

A. Not exactly astern, on her port quarter.

Q. Was—there never was any danger then?

(Testimony of J. F. Haglund.)

There never was any close escape of the "Arcona"?

A. If anything had happened to the "Mikahala's" hawsers there would have been danger.

Q. There was no likelihood that the "Mikahala's" line would break after the "Celtic Chief" was afloat if it didn't break before?

A. That I couldn't state.

Q. It was in pretty good condition?

A. No, the "Mikahala" may have jumped on her.

Q. Would it have been good seamanship?

A. No, it wouldn't be good seamanship, but the captain of the ship wasn't handling the engines, and you can't tell exactly what an engineer may do in a rush of that sort where the "Mikahala" is swinging over to port.

Q. When the "Celtic Chief" was brought to her anchorage by the "Likelike," did she drop her anchors? A. Yes.

Q. She did that? A. Yes.

Q. And was that a good anchorage that she was brought to?

A. Ordinary anchorage outside the harbor.

Q. As a matter of fact, it is the sort of anchorage that a ship would anchor in without any hesitancy and wait through the night until morning for a tug, to come [3124—2293] into the harbor if it happened to be convenient to do that? A. Yes.

Q. So that, as a matter of fact, Captain, there was no danger to the "Celtic Chief" after she had reached that anchorage, was there? She was then safe as an ordinary boat would be, anchored in that place?

A. So far as I know, yes.

Q. So that the standing by of the Inter-Island ves-

(Testimony of J. F. Haglund.)

sels after she was anchored until the next morning, was not a necessity or even a matter that was particularly advisable?

A. Yes, I think it was advisable. I wouldn't say it was an absolute necessity.

Q. Why do you think it was advisable?

A. Because, on my direct I stated that the wind was from the southward and it looked very thick and misty and no one could tell whether this wind was going to increase or not. That's why I kept the two boats lying out there.

Q. You don't ordinarily regard a vessel as requiring assistance such as standing by when it is out there in the anchorage?

A. Just as much so as the "Celtic Chief."

Q. The Inter-Island vessels wouldn't stop to give assistance of that character to a ship if the ship had not been ashore previous to that time, would it?

A. If we was required to do so.

Q. They wouldn't regard that ship in danger and requiring their assistance, would they, voluntarily?

A. No, I won't say that. We had the two boats out there and, being night, there was really nothing gained for the Inter-Island to go into the harbor. That's one reason. [3125—2294]

Q. It really doesn't make any difference?

A. And the other reason is that, as I already stated, to stay by the ship if anything had occurred.

Q. As a matter of fact, was safe when she was brought to that anchorage?

A. I consider it so, yes.

Q. If lines, a line or lines had been made fast to

(Testimony of J. F. Haglund.)

the "Celtic Chief's" bow in an attempt to pull her off in that way, Captain Haglund, wouldn't it have been possible for the "Intrepid" or some other vessel to have kept a line on her stern which would have at least prevented her from going broadside on the reef?

A. That all depends on which of the two lines would be more effective on the ship. If the line over forward had more power on it, it, naturally enough, would slue the ship around.

Q. Wouldn't there also have been the tendency to give her some sternway?

A. Provided you were pulling her stern to, yes, but that, certainly, wasn't being practical.

Q. That is your opinion?

A. That's my opinion.

Q. And the opinion of the "Arcona" officers would have been just the opposite? A. Yes.

Q. And you regard your opinion as the better of the two? A. I do in this particular case, yes.

Q. Was there any conversation with anyone on board the "Mokolii" when this heaving line was thrown on board the "Celtic Chief" and from that time on until that heaving line was thrown overboard again?

A. I never heard any conversation after Captain Scott of the "Mokolii" hove a line and asked the "Celtic Chief" to make it fast.

Q. That's all the conversation you ever heard?
[3126—2295]

A. I never heard anything outside of that.

Q. Where were you? A. On the quarter.

Q. Where were Captain Macaulay and Captain Henry? A. Right near where I was standing.

(Testimony of J. F. Haglund.)

Q. And if they had said anything you would have heard it, wouldn't you? A. I think I could, yes.

Q. You heard Captain Miller on the morning of Wednesday when he came aboard in regard to his anchor, talking or speaking in regard to his anchor, didn't you?

A. Yes, I was down on the main deck at the time he came aboard and spoke to Captain Henry. Captain Macaulay was also there.

Q. Will you state what that conversation was between Captain Henry and Captain Miller as nearly as you can remember?

A. It was regarding to laying a line from his anchor to the "Celtic Chief" and Captain Henry objected.

Q. What did he say?

A. He said, "I won't have no line from your anchor in the direction you've got it because it would be of no use."

Q. What did Captain Miller say to that?

A. He asked Captain Henry then if he would take a line from it if he would put it in a different position.

Q. What did Captain Henry say?

A. He said, "If you put it astern near to that poop, I certainly will."

Q. What did Captain Miller say to that?

A. He went about and shifted that anchor.

Q. Were there any angry words between them in any way?

A. I don't know. Yes, there was. Well, there was a little about Captain Miller had promised to

(Testimony of J. F. Haglund.)

come out there on Tuesday but he failed in doing. That's all. [3127—2296]

Q. What did Captain Henry say about that?

A. Well, I don't remember what he answered him exactly. Captain Miller had some excuse for not coming out on Tuesday. Whatever it were I don't exactly remember.

Q. Did you hear Captain Henry say anything like this, "I don't want your anchor. I don't want any anchor," when Captain Miller said the reason he hadn't come back was because he had gone for an anchor? A. I didn't hear that.

Q. Didn't hear anything substantially of that kind? A. I didn't.

Q. Where was this conversation?

A. That was on the main deck just about abreast of the mainmast on the starboard side.

Q. You were there? A. I was there.

Q. You saw Captain Miller come aboard?

A. I did.

Q. You saw Captain Miller talk to Captain Henry?

A. Yes.

Q. You also remained there until Captain Miller left to go and drop his anchor? A. I did.

Q. How long was that wire, the line that was used as a preventer in connection with the Miller line, used to strengthen the latter, to supplement the ten-inch manilla hawser which ran from the wire line of the Miller Salvage Company on board the "Celtic Chief"?

A. I couldn't tell you the length of them.

Q. You don't know how far it was from the stern of the vessel to the shackle where the wire lines and

(Testimony of J. F. Haglund.)

manilla hawser were made fast to the big wire line?

A. I could not tell you the distance that was.

Q. That wire line was straight out of the water about [3128—2297] eleven o'clock of Wednesday night, the big wire line, so that the end of the big wire line was visible?

A. The big wire was visible to me at eleven o'clock.

Q. So that the whole of the manilla hawser was visible and also the end of the wire line?

A. Aboard the ship.

Q. But you could see also the manilla hawser running out to the big wire line?

A. At eleven o'clock, I couldn't positively state whether that manilla hawser was inside or close up to the chock. That I couldn't possible state because I didn't look up so high as that.

Q. How did you happen to see all of these manilla hawsers which were supplied to the Inter-Island boats for the "Celtic Chief" operations?

A. How did I happen to see them?

Q. Yes. A. By looking at them.

Q. I judge that in order to see them you had to look at them, but how did you happen to look at them?

A. I don't understand what counsel means by that question.

Q. Well, did you have anything to do with the supplying of those lines to the vessels?

A. I ordered them from the ship's chandlery store; yes.

Q. And did you go and get them?

A. I did not; the draymen went and got them.

Q. And where did he take them to?

A. Took them alongside of the steamers.

(Testimony of J. F. Haglund.)

Q. How do you know? A. I saw them.

Q. Where did you see them? A. On the wharf.

Q. And you saw all of those lines delivered?

A. Not all. I saw the "Mikahala's" and the [3129—2298] "Mauna Kea's."

Q. Did you see the "Likelike's" line at all?

A. I did not.

Q. You don't know whether it was a new line?

A. I do; I saw it when it come out to the "Celtic Chief." I had hold of it there to make it fast at the "Celtic Chief."

Q. What kind of a line is ordinarily used by tugs here in the harbor for towing purposes? What size?

A. The "Intrepid," you mean?

Q. Yes, the "Intrepid" or any other tug that does towing?

A. The "Intrepid," I think her line is about ten inches, and on the Inter-Island boats it depends on which boat tows. The "Mauna Kea," send her out for anything, I generally supply her with eight or nine inch manilla hawser. If it is a more powerful boat, of course, I have to put a heavier line aboard.

Q. When was it that the "Arcona" first broke her line?

A. So near as I can remember, about noon on Wednesday.

Q. When did she come out?

A. That was on between eleven and twelve o'clock. I don't know exactly the time. It was after eleven, if I remember right.

Q. And she had already gotten her line aboard and gone forward and broken it about twelve o'clock?

(Testimony of J. F. Haglund.)

A. Maybe little after twelve; maybe half-past twelve.

Q. When was it she changed, the position of her anchor, with reference to the breaking of that line, before or after?

A. It was after breaking the first line.

Q. She didn't run afoul of the "Helene" up to the time she broke that first line?

A. She didn't go so far as the "Helene" when she broke it. She broke that line when she tried to put herself in position, lying at [3130—2299] that time seaward of the "Helene."

Q. As a matter of fact, she was able to make fast to the "Celtic Chief" in the first position, get her line into position where she could pull and did pull and break that line, without fouling the "Helene"?

A. I didn't say that. She didn't pull on that line.

Q. It broke without any pulling?

A. It broke in trying to slue her around. That was no size wire for her to pull on.

Q. Did that wire run afoul of the "Helene"?

A. No, not that I know of. It didn't foul it. It might have been against it; I don't know. I was on the "Celtic Chief."

Q. You didn't take that into consideration when you stated the opinion that it was an unseamanlike manoeuver? You didn't take into consideration the fact that she actually got her line aboard of the "Celtic Chief" and was able to break that line without fouling the "Helene"?

A. She could not very well foul the "Helene."

Q. You didn't take that into consideration?

(Testimony of J. F. Haglund.)

A. I don't understand your question.

Q. With her anchor in her first position she would have been able to haul in on her anchor-chain, could she not, and thus have prevented herself from fouling the "Helene"?

A. Yes, but then by doing so she would have drifted down; she had nothing to hold her beside her engine.

Q. Wouldn't the line that was attached to the "Celtic Chief" have some tendency to hold her?

A. Certainly not. [3131—2300]

Q. Wouldn't the line on the "Celtic Chief" have become taut if she had hauled in on her anchor?

A. And dragged her anchor?

Q. It all depends whether her anchor would drag?

A. It certainly would.

Q. Did the "Helene's" anchors drag?

A. No, she had a big scope of chain out. The "Arcona's" anchor wouldn't drag either after she placed it in a proper position.

Q. Do you know it did drag in this first position?

A. She never heaved in.

Q. Then you don't know if it would have dragged?

A. If she had heaved up her anchor it wouldn't prevent her.

Q. If she had attempted to use that anchor in getting her position there you say that it would not hold, that it would drag?

A. I know she couldn't possibly get into position with the anchor where it was placed the first time. It's impossible.

Q. I'm asking you if you know the anchor had dragged, and until that question is answered—I move

(Testimony of J. F. Haglund.)

to strike the last answer on the ground it is not responsive.

The COURT.—The motion is granted.

Q. I ask you whether or not you could tell that the anchor had dragged without knowing the character of the bottom there in the position it was first laid in?

A. If the ship had remained outside where she were?

Q. Can't you answer my question?

A. Well, I must know under what conditions, Mr. Olson.

Q. Would it be possible to heave in on the line attached [3132—2301] to the "Celtic Chief" at the same time or after doing that heave in on the anchor-chains?

A. No. It is just what I have already stated. She couldn't do that. She would foul the "Helene." She couldn't come in when the anchor was dragged.

Q. Do you regard it as seamanlike or good seamanship for the "Mikahala" to have remained in her position if the "Arcona" by beginning to pull at any time or heaving in on her anchor-chain would foul the "Mikahala"?

A. All kinds of chances for the "Mikahala" to get clear of that if she had been requested or if the "Arcona" had attempted to heave her chain. The "Mikahala" could have got out of her way.

Q. You think it was perfectly simple even though the wind and the current would have influenced the "Arcona" in the same way?

A. The "Mikahala" having two towlines, one on each side, it was just as easy for the "Mikahala" to tow from her port side as it was from her starboard

(Testimony of J. F. Haglund.)

side, which would have got the "Mikahala" from the "Arcona" if she had attempted to heave in her chain.

Q. You regard that as good seamanship on the part of the "Mikahala"?

A. There was no seamanship required.

Q. In other words, there was no poor seamanship involved in that?

Mr. WARREN.—I'd like to have the witness allowed to finish the answer that he was interrupted—

The COURT.—Finish your answer, Captain.

The WITNESS.—It is pretty good seamanship, I should judge, when a master of a ship fixes his vessel so he can handle her either way she may be required.

Q. I'm asking you if there was any poor seamanship involved [3133—2302] in the "Mikahala's" remaining in that position even though if the "Arcona" had begun to pull, the "Arcona's" lines would have fouled her?

Mr. WARREN.—I object to that as suppositious.

The COURT.—It seems to me that's proper cross-examination.

A. I have stated that the "Mikahala" would not remain in that position.

Q. That is not the answer I'm asking you for and I move to strike on the ground it is not responsive.

The COURT.—I sustain the objection.

Mr. OLSON.—That is, grant the motion. Now, state whether or not that was good seamanship.

Mr. WARREN.—I object to that, your Honor; he says that was poor seamanship.

Mr. OLSON.—Your Honor allows the question, as I understand?

The COURT.—Yes, I do.

(Testimony of J. F. Haglund.)

Q. Answer the question, Captain. Would that or would that not be poor seamanship?

A. If the "Arcona" had attempted to heave in on her chain?

Q. Kindly repeat the question to him.

(Question read.)

Q. Now, Captain, in order to make it perfectly clear to you—

Mr. WARREN.—I object to that. I want that question to be asked.

(Question read.)

Q. Go on, Captain, and add some more if you want to do so.

A. Supposing the "Arcona" had heaved in her chain, with the "Mikahala" line in the position that she was, she wouldn't foul the "Mikahala." [3134—2303]

Q. But she would come close alongside of her and the way the "Mikahala" was towing at that time she would come down ahead probably three or four points and, therefore, it was poor seamanship for her to remain in that position?

A. I consider seamanship very good in all cases out there referring to our Inter-Island boats.

Q. When did you see the commander of the "Arcona" when you came aboard the "Celtic Chief" about eleven o'clock?

A. I did not see him at that time.

Q. When did you see him?

A. When he was—when he run by the poop to go on his boat.

Q. That's when you saw him for the first time?

(Testimony of J. F. Haglund.)

A. That's the first time that I know he was aboard.

Q. And that was about what time?

A. Just as the ship was coming off the reef.

Q. He had been on the poop deck where you had been during the better part of a half an hour or more yet you didn't see him? A. I did not.

Q. Didn't you say he was on the starboard quarter?

A. He came running from there, but where he had been previous to that I don't know.

Q. What was the nearest distance, the nearest distance, that between the "Helene's" bow and her starboard anchor or that between the "Helene's" bow and her port anchor?

A. Her starboard anchor. Her starboard anchor was the furthest off.

Q. How many fathoms? A. Ninety.

Q. After it was hove taut how far was the Miller anchor laid from the stern of the "Celtic Chief"?

A. The Miller's anchor?

Q. Yes.

A. Just a little ways [3135—2304] ahead of the "Arcona's" stern.

Q. How many feet would that be, about?

A. Oh, I should judge about thirty or forty feet perhaps.

Q. How much? A. Thirty or forty feet.

Q. Ahead of the stern of the "Arcona"?

A. Yes.

Q. How far would that be then from the "Celtic Chief's" stern?

A. Well, the nearest would be, approximately six hundred and seventy feet, I should judge.

(Testimony of J. F. Haglund.)

Q. Six hundred and seventy feet?

A. About that. Between seventy and eighty.

Q. So that it was more than a hundred feet farther distance from the stern of the "Celtic Chief" than the "Helene's" forecastle was forward of the poop of the "Helene"? A. Yes.

Q. Now, how high out of the water is the bow of the "Helene" at the point where its anchor-chains, or on the line of the points where its anchor-chains go into the bow? A. Maybe ten feet.

Q. How much?

A. Maybe ten feet; I don't know.

Q. About ten feet. What was the depth of the water at the bow of the "Helene"?

A. Somewheres over five fathoms; I don't know exactly how much.

Q. That would be somewhat over thirty feet—that's right, isn't it? A. Five fathoms, yes.

Q. How much?

A. Five fathoms is thirty feet, yes.

Q. So that from the point at which the anchor-chains of the "Helene" went out of the "Helene" to the sea-bottom there would be about forty feet, would there not? A. I didn't measure that.

Q. Well, if there were five fathoms or over, or thirty [3136—2305] feet and ten feet from the water line to the point where the chains went out of the bow of the "Helene," that would make forty feet, wouldn't it?

A. Yes, but her anchor-chains wasn't there.

Q. Where were the anchor-chains?

A. Out ahead.

Q. I mean at the point where they went into the

(Testimony of J. F. Haglund.)

“Helene”? A. Yes.

Q. That would be forty feet from the sea-bottom?

A. Approximately that.

Q. And the point where the Miller Salvage Company's line went over the stern of the “Celtic Chief” was about twenty feet further ahead, wasn't it?

A. Yes.

Q. And there was about nineteen feet of cable?

A. Approximately that.

Q. So there would be thirty-nine or forty feet there from the point where the Miller Salvage Company's line went aboard the “Celtic Chief” to the sea-bottom; isn't that right? A. Yes.

Q. What was the depth of the water where the starboard anchor of the “Helene” was lying?

A. Oh, maybe between six and seven fathoms.

Q. Six or seven fathoms?

A. Not any over seven.

Q. About forty feet, you think?

A. Maybe little less.

Q. Thirty-five or forty? A. Approximately.

Q. Now, at the point where the Miller Salvage Co. anchor was laid what was the depth of the water?

A. Just about five fathom.

Q. About five fathom? A. About that.

Q. That would be about twenty feet?

A. Maybe a trifle more. [3137—2306]

Q. Do you know the weight of the Miller Salvage Company's wire hawser which was attached to the Miller Salvage Company's anchor? A. I do not.

Q. Do you know the weight of the anchor-chain that let off from the “Helene” to the “Helene's” starboard anchor? A. I do.

(Testimony of J. F. Haglund.)

Q. What's the weight?

A. Approximately one hundred and twenty-eight or twenty-nine pound to a fathom.

Q. Then, as a matter of fact, you've testified that the reason why an anchor halfway is more effective than when nearer is because of the smaller angle?

A. Smaller angle. As a matter of fact, the "Helene" anchor was lying nearer to the "Helene's" bow than the Miller anchor was laid distant from the "Helene's" stern.

Q. Then, I understand that the angle would, if anything, be less for the Miller anchor than the "Helene's" starboard anchor, would it not?

A. Yes, but not at the "Helene."

Q. That has nothing to do with the matter as far as I understand it, Captain.

A. It got everything to do with it. In this case, that anchor wasn't laid out in that position, Mr. Olson, to hold the "Helene"; it was placed there for the purpose of holding the "Celtic Chief" from going in.

Q. I understand that, Captain. Now, Captain, I want to show you a little piece of paper here with a drawing on it on which I have a line marked "sea level" and another marked "sea-bottom."

Mr. WARREN.—One moment, your Honor. What is the purpose of this?

Mr. OLSON.—I'm going to offer it in evidence.

Mr. WARREN.—Your Honor overrules my objection?

The COURT.—Yes.

Q. Now, another line on this piece of paper I have

(Testimony of J. F. Haglund.)

[3138—2307] marked “sea-bottom.” I have also there, two figures, one of them, I put the name “Helene” and on the other “Celtic Chief.”

Mr. WARREN.—I want further to object to any supposititious questions or any hypothetical questions involving there particular vessels.

The COURT.—Objection overruled.

Q. Now, then, Captain, I want you to take that paper. I’ve also drawn lines running from each of those two figures, the “Celtic Chief” and the “Helene,” to the bottom, and have drawn small anchors at the end of those lines. There is, also, a line between the two vessels indicating a towline between the “Helene” and the “Celtic Chief.” Now, I’ll ask you if that is not approximately the position, the relative positions of the Miller anchor as compared with the starboard anchor of the “Helene.”

Mr. WARREN.—Now, I certainly object to this, if your Honor please, any supposititious question—

Mr. OLSON.—In order to save time, I will let the witness draw and I’ll withdraw the questions that I have already asked. Captain, assume a scale of a hundred feet to the inch to start with. Kindly draw across the page, somewhat near the middle of the length of the page, a line indicating sea-bottom.

(Witness draws.)

Q. Now, then, with the depth of water at the stern of the “Celtic Chief” being, that is, the sea-bottom at the “Celtic Chief’s” stern from the stern itself, being about forty feet, will you kindly draw the sea level with reference to that point on that page on this scale?

(Witness draws.)

(Testimony of J. F. Haglund.)

Q. Now, having found the point which would be sea level, will you kindly draw a line across that page indicating [3139—2308] sea level, also finding the, also measuring the same at the other end of the page?

Mr. WARREN.—I object, your Honor.

Q. The length of that page is approximately thirteen inches, is it not?

A. Approximately thirteen inches.

Q. That would be about thirteen hundred feet, would it not? A. Yes.

Q. Now, then, what would be the depth of the water about thirteen hundred feet or say twelve hundred feet astern of the "Celtic Chief"?

A. Approximately thirteen hundred feet.

Q. Would be the position of the "Helene's" starboard anchor? A. Starboard anchor.

Q. Mark the "Helene's" starboard anchor, will you? At this sea bottom that you've drawn, draw an anchor.

(Witness draws.)

Q. Now, will you write "sea bottom" on this line that you have drawn?

(Witness writes.)

Q. Now, you have testified that there was about six or seven fathoms of water or about thirty-six or forty feet of water where the "Helene's" starboard anchor was laid, have you not?

A. That's the greatest depth.

Q. That would be about it, would it not?

A. Yes.

Q. That's your testimony, is it not?

A. Between six and seven; it may be as near seven.

(Testimony of J. F. Haglund.)

Q. Make it approximately, say, thirty-eight feet. Now, according to the scale of one inch for a hundred feet, kindly find the sea level.

A. That's about it. (Indicating.)

Q. Mark that, please. [3140—2309]

(Witness marks.)

Q. Now, then, about twenty feet at the stern of the "Celtic Chief," will you kindly find that sea level at the other end?

(Witness marks.)

Q. Now, have you found the point which would indicate sea level? A. Approximately, yes.

Now, then, please draw the sea level line according to those two points so found.

(Witness draws.)

Q. Now, kindly write "sea level" on that line?

(Witness writes.)

Q. Now, will you kindly draw the "Helene" at its location, showing its bow where the anchor chains came out of the bow ten feet above sea level?

Having found the point where the "Helene's" bow was, now draw the "Helene," please, her length being shown also.

(Witness draws.)

Q. Now, have you shown the "Helene"?

A. Yes.

Q. Now, mark that "Helene," please.

(Witness marks.)

Q. Now, draw a straight line from the "Helene's" bow to her anchor.

(Witness draws.) This ought to be out here; that's not as long as between the "Celtic Chief" and

(Testimony of J. F. Haglund.)

the starboard anchor.

Q. Now, have you drawn the anchor chain from the "Helene's" bow to her anchor?

(Witness draws.) I have.

Q. Now, then, kindly indicate the "Celtic Chief's" stern. Kindly draw the "Celtic Chief," her stern.

(Witness draws.)

Q. Have you drawn the "Celtic Chief"? [3141—2310] A. I have.

Q. Kindly mark it "Celtic Chief."

(Witness marks.)

Q. Now, then, please indicate on the sea-bottom, as you have drawn it, the position of the Miller anchor by drawing an anchor at its location.

(Witness draws.)

Q. Mark it "Anchor," will you, please?

(Witness marks.)

Q. Have you drawn the Miller anchor?

A. I have.

Q. And have you drawn a line indicating a straight line indicating the line from that anchor to the stern of the "Celtic Chief"?

A. As near as I can, yes.

Q. Now, then, Captain, this drawing that you have made is, for all practical purposes, a correct drawing, is it not, showing the angles of straight line in the first place from the anchor of the "Helene," to the "Helene's" bow her starboard anchor to her bow, and, secondly, the Miller anchor to the "Celtic Chief's" stern; is that not correct?

A. Approximately correct, yes.

Q. Kindly draw a line indicating the hawser of the

(Testimony of J. F. Haglund.)

“Helene” to the “Celtic Chief.”

(Witness draws.)

Q. Now, mark the Miller anchor “Miller anchor,” here.

(Witness marks.)

Q. Anchor line attached to that.

(Witness marks.)

Q. Have you marked the Miller anchor line, “Miller anchor line”? A. I have.

Q. Now, mark the “Helene’s” anchor line, “‘Helene’s’ anchor line.”

(Witness marks.)

Q. Please show on this plan that the scale is one hundred [3142—2311] feet to the inch.

(Witness writes.)

Q. Kindly mark underneath the “Helene’s” anchor as drawn, “‘Helene’s’ starboard anchor.”

(Witness marks.)

Q. Now, then, Captain, in so far as the anchor is concerned in each case the angle of a line from the anchor itself from the Miller anchor to the “Celtic Chief” is somewhat smaller than the angle formed by a straight line from the “Helene’s” starboard anchor to the “Helene’s” bow; isn’t that true?

A. I believe so.

Mr. OLSON.—I offer this drawing made by Captain Haglund to which, concerning which he has been testifying in evidence.

The COURT.—It may be received in evidence and marked Libellants’ Exhibit “P.”

Q. I’d like to have you repeat that last statement. The angle that you have just referred to, that angle

(Testimony of J. F. Haglund.)

to the Miller anchor, will be somewhat less than that formed by a straight line to the "Helene's" bow?

A. I never measured it.

Q. It would be as a matter of fact.

A. Providing the chain would be held as taut as a wire.

Q. You don't know what the weight of the Miller anchor line was? A. I know it was less—

Q. I'm asking you if you know what it's weight was? Do you? A. Not in pounds, no.

Q. Do you know its size? A. Approximately.

Q. Well, what is its approximate size.

A. Approximate size, I stated, six inches, but I am not positive about it.

Q. Don't you know, isn't it quite possible that it was a two and a half inch diameter, steel hawser? [3143—2312] A. No, sir.

Q. You are sure of that? A. I am sure of that.

Q. Approximately two inches?

A. Less, if anything.

Q. Now, the purchase that the "Helene's" anchor would get by virtue of the angle, aside from the question of the weight of the anchor-chain, would not be any greater or better than that of the Miller anchor, would it, aside, I say, from the weight of the anchor-chain? A. I couldn't state that.

Q. You wouldn't state that? A. Not in pounds.

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Q. Captain, was there any mud around that vicinity in the sea-bottom, as far as you know?

A. Not to my knowledge.

Q. And a sandy bottom has been spoken of to the

(Testimony of J. F. Haglund.)

extent that there was sand. That is sand which is composed chiefly of ground-up coral, is it not?

A. All the sand around the Hawaiian Islands is more or less coral.

Q. Yes, it's ground-up coral to a large extent, and as that kind of bottom it presents a fairly firm bottom, does it not? A. It does, in places.

Q. It's not soft like mud? A. No, not mud.

Q. And that was true out there in so far as there was any sandy bottom? A. So far as I know.

Q. What is the width of a link in the kind of a chain that the "Helene" had to its anchors?

A. The width of it?

Q. Yes, width of the chain, the width of a link?

A. I couldn't state it correctly.

Q. You testified that the links were seven or eight inches long?

A. So near as I could judge. [3144—2313]

Q. Well, what is your best judgment as to the width of a link?

A. Approximately four or five inches.

Q. It's almost, then, within an inch or two, as wide as it is long?

A. It may be a little longer than seven inches.

Q. And what is the thickness of the bar, around, the diameter? A. Inch and a half.

Q. That is to say, if you were to cut one of those links at one end and straighten the bar out, the bar would be an inch and a half thick?

A. Thick; yes.

Q. About how far, about how high were those swells that you've spoken of that came in, about how

(Testimony of J. F. Haglund.)

high would they rise at the sides of the towing steamers? A. Well, it is hard to state that correctly.

Q. Well, it is hard as you can state?

A. As the steamers were rising up with the swells it is pretty near impossible to determine the height of the swells. They are certainly a great deal less than they would be alongside the "Celtic Chief" as they rose up.

Q. Nevertheless, those swells could be seen, couldn't they? A. Oh, certainly.

Q. And as they would come to the edge of the reef they would increase in size?

A. As the water shallowed up, yes.

Q. The larger swells would be apparently larger out among the towing steamers in comparison with the smaller swells, would they not? A. Yes, sir.

Q. Now, about how many feet per minute would those larger swells travel?

A. I couldn't possibly state that.

Q. You've no idea?

A. They travelled slowly, but how fast I couldn't state. [3145—2314]

Q. Travelled fairly slowly?

A. Fairly slowly, yes.

Q. Now, then, Captain, in view of the danger that you have testified to incurred by the shore boats working alongside the "Celtic Chief," the men in the shore boats would naturally, would they not, keep their eye for these swells as they were coming in?

A. Yes.

Q. And, as a matter of fact, the swells could be seen out as far as the towing steamers and, therefore, they

(Testimony of J. F. Haglund.)

would know when the swells were coming in?

A. They can see them before they strike the boat.

Q. Now, these swells didn't come one right after another, within a half second of each other?

A. Not so close as that.

Q. As a matter of fact, there was some little interval between each swell? A. Yes.

Q. And especially between the larger ones, is that not true?

A. Well, there's little longer interval, yes.

Q. So that, being able to see these swells coming in at from a distance as much as five, six, or seven hundred feet, the distance of the towing steamers away from the "Celtic Chief," the men in the shore boats would be prepared, practically speaking, in each instance as they came along?

A. In the daytime when they could see it.

Q. You have testified, have you not, to some danger to the boats and the men in the boats from the slings swinging out over the boat? A. I said that also.

Q. How long did it take to lower a sling from the boom which was swung out over the side of the "Celtic Chief," into the shore boats.

A. That wouldn't take very long; hardly a second or so.

Q. Perhaps less than that?

A. No. [3146—2315]

Q. It would have dropped down easily but, nevertheless, quite quickly?

A. Yes, but you couldn't lift it up.

Q. Now, then, Captain Haglund, wasn't it perfectly possible, especially during the daytime, to drop

(Testimony of J. F. Haglund.)

those slings in the shore boats so as to avoid the crest of the swell in each instance?

A. We couldn't unless we sacrificed the rapidity of the discharging. I should say that was the main object, to get the cargo out of the ship.

Q. About how far from the stern of the "Celtic Chief" were the boats lying alongside of the "Celtic Chief," which were taking cargo from the main hatch? A. Well, approximately in the midships.

Q. Approximately amidships, that is, seventy-five or a hundred feet at least from the stern of the "Celtic Chief"?

A. It would be a hundred and thirty feet in this particular case.

Q. Now, then, by the time that a swell had reached the stern of the "Celtic Chief," where it would be visible easily, a slingload could be dropped or lowered into the boat before that swell actually reached the shore boat, couldn't it?

A. I only say that it might and it might not. We could not know the height of each swell and we never know how fast they were coming. If the swells had been coming at the same rate of speed. The bigger the swell was the more velocity it would have as it struck the shallower water.

Q. Did you have a man stationed alongside of the rail or bulwarks of the "Celtic Chief" for the purpose of watching out for these swells in the lowering?

A. No, I didn't have a man stationed for the purpose of watching the swells, but I had a man there on purpose to avoid any accident to the man in the boats. He wasn't particularly directed to [3147—2316]

(Testimony of J. F. Haglund.)

watch out for these swells.

Q. You didn't regard that as of sufficient importance to call that to his attention?

A. All our steamer men, they are so used to working like that in the boats in a seaway, so that it's not necessary to caution them.

Q. They are perfectly accustomed to doing work of that kind?

A. Not exactly of that kind as existed at the "Celtic Chief," but in the seaway alongside of steamers.

Q. Where the conditions would require observation and attention of the same character on the part of the men working the shore boats?

A. I don't understand the question clearly enough to answer it.

Q. Repeat the question. (Question read.) These men are accustomed to working under conditions which would require the same character of observation as was required out there at the "Celtic Chief" in regard to the safety of lowering cargo into the shore boats.

A. No, they were not accustomed to that.

Q. Then, why didn't you keep a man stationed alongside for the purpose of looking out for these swells and hoisting the slings up?

A. We had no means of doing so, in regard to the hoisting of them slings.

Q. In other words, you regard the ability to hoist and lower the arm or the sling attached to the arm, as the only means of avoiding the swells.

A. In order to do the work as we did it. As I stated before, if we would take our time about it we

(Testimony of J. F. Haglund.)

could haul the boat away and watch an opportunity between the larger swells and accomplish the work without the danger that we did.

Q. And that's the only means that occurs to you of avoiding [3148—2317] the danger of those swells, is it? A. That's the only means.

Q. It's the only way that you know.

A. In this particular case.

Q. Didn't occur to you to keep a man alongside of *the*, or at the bulwarks or rail of the "Celtic Chief," to watch the swells and direct the lowering of the sling just after the swell had passed or a sufficiently long time after the swell had passed?

A. I had a man stationed at the rail in order to make the signal when to go, when to lower in the boats, and to avoid accidents as near as possible.

Q. Did you call their attention to these particular swells?

A. I certainly did—to be careful, not to have any accident.

Q. Did you tell them to give a signal to lower when a swell was about to come on the shore boat.

A. I certainly did that.

Q. And they did that? A. So near as possible.

Q. Now, in the daytime with these intervals between the swells, there was no difficulty in avoiding those swells? A. Not the small swells.

Q. Even the large ones?

A. It was a little difference between the swell, Mr. Olson. Neither I nor anybody else could judge that correctly.

Q. But you have testified, have you not, that there

(Testimony of J. F. Haglund.)

was a considerable interval between each swell, a considerable interval. It wasn't a matter of one following the other with a second interval?

A. Not a second.

Q. You have testified that it would take only about a second to lower a sling into the boats?

A. All depends where the sling was.

Q. After the sling was over the side of the vessel?

A. The sling had to be. After the slingload of fertilizer [3149—2318] is swung there was somewhere about twenty feet below and you couldn't do that in a second unless you let it go and break the boat and kill somebody.

Q. You could lower that down slowly?

A. Yes, we did, and occasionally the swell came and lifted the boat and that's where the danger came in.

Q. Your man at the rail of the "Celtic Chief," stationed there with the duty in particular of looking out for these swells, would direct the lowering of a sling, would he, when the swell was about to come down?

A. He didn't know how fast the swell was coming. After the swell commenced coming near the "Celtic Chief" and commenced breaking it would take less than a second.

Q. You think it would take less than a second for those swells to travel a hundred to a hundred and thirty feet? A. Some of the bigger ones.

Q. If that was the case and these larger swells were all of that character, the man at the side of the boat would, naturally, look out for these swells?

(Testimony of J. F. Haglund.)

A. He certainly did.

Q. When did the search-light of the "Arcona" begin to appear and play on Wednesday night?

A. When it commenced?

Q. When did it begin to appear?

A. So near as I can remember, approximately eleven o'clock.

Q. You had ship's lights around the "Celtic Chief" at various places? A. Oil lamps.

Q. And there were ship's lights around the deck?

A. Yes.

Q. As a matter of fact, these ship's lights were sufficient to light up the water so that you were able to see the Miller anchor buoy some fifty feet away from the "Arcona," weren't you?

A. With the lights from the "Arcona." [3150—2319]

Q. The lights from the "Arcona," not the search-light. You could see that anchor buoy, couldn't you, on Wednesday night?

A. I was alongside of it in a boat. I never stated I could see the anchor buoy from the "Celtic Chief."

Q. Was that the only time you could see that anchor buoy? A. Daytime I could see it plainly.

Q. We are referring now to the night-time.

A. I saw it at night but not from the "Celtic Chief."

Q. Well, you rowed out there passed that buoy?

A. I did.

Q. And when you came within fifty or sixty feet of it you could see it with the aid of the lights from the "Arcona"?

(Testimony of J. F. Haglund.)

A. I was closer than fifty or sixty feet.

Q. Then you came within fifty or sixty feet?

A. I didn't watch out for it particularly.

Q. Didn't the lights from the "Arcona" light up the water sufficiently around her so that objects could be seen somewhat of a distance from her.

A. The search-light—

Q. Not the search-light.

A. There was electric lights. It was certainly great deal more light around there than at the "Celtic Chief."

Q. Now, as a matter of fact, you had lights around the stern of the "Celtic Chief"? A. Oil lamps.

Q. As a matter of fact, there was sufficient light on Wednesday night so that by looking over the side of the vessel you were able to see the lines forty or fifty feet or more out from the "Celtic Chief." You have so testified, have you not?

A. I could see light after the search-light—

Q. Before the search-light was put on.

A. From the "Celtic Chief"? [3151—2320]

Q. Yes. I'm carefully avoiding that search-light. From the "Celtic Chief."

A. There was a number of hours that I was absent from the "Celtic Chief" during that evening and I didn't state that I could see from the steamer or the "Likelike" the lines coming aboard the "Celtic Chief."

Q. Can't you understand, Captain, that I'm asking you to testify with reference to what you could see on Wednesday night after dark before the search-light was put on?

(Testimony of J. F. Haglund.)

A. I wasn't aboard the "Celtic Chief" more than a short interval after dark, an hour and a half after dark at the most. I left the ship before nine o'clock.

Q. What time was it dark on Wednesday night?

A. About half-past six or seven o'clock.

Q. During that hour and a half, were you ever on the poop of the "Celtic Chief"?

A. I certainly was.

Q. I want to know if, during that time while the "Arcona" search-light was not being used, whether or not you could see the lines attached to the "Celtic Chief" forty or fifty or more feet out from the stern of the "Celtic Chief."

A. I think I could see that length of distance.

Q. If you could see these lines at that distance, it would have been possible for you to see the lines that far? A. I couldn't state that.

Q. Do you think that if you could see those lines as far out as fifty or sixty feet out from the "Celtic Chief" that you could see the swells directly underneath those lines? A. I couldn't state that.

Q. Is it your present judgment that you could not see those swells? A. Not as plain as the lines.

Q. Did you see them at all?

A. I might have, but I don't think I could.

Q. Now, if there was so much danger from these swells that you have talked about, Captain, withdraw that. Did you [3152—2321] have a man stationed up on the poop of the vessel to look out for these swells that were of such danger?

A. The man on the poop was of less use to watch swells than he would be amidships. That would be a poor idea.

(Testimony of J. F. Haglund.)

Q. It would be a poor idea to have a man on the poop to help out the man amidships?

A. It would be absolutely of no use.

Q. Because it wasn't of sufficient importance to think of the swell. The swell never rose up before it passed the "Celtic Chief" stern; is that right? You have testified, have you not, that the swells were all visible in the daylight out as far as the towing steamers?

A. To a certain extent they were visible, but to determine how high they would be when they struck the "Celtic Chief" no living man could testify to it.

Q. You have testified, have you not, that the larger ones were visible out at the "Celtic Chief" as distinguished from the smaller ones?

A. You could distinguish them.

Q. They wouldn't be so distinguishable, would they, fifty or sixty feet away from the stern of the "Celtic Chief"? A. I could not state that.

Q. Wouldn't it have been quite possible and also of assistance to have a man stationed at the poop of the vessel with a megaphone through which he could holler out to the man amidships about the swell?

A. Not stationed at the poop.

Q. You could not see the swells very plain although you could see these lines fifty or sixty feet?

A. I certainly could, fifty or sixty.

Q. Now, there must have been some light shining for you to be able to see those lines?

A. There was considerable lights around the steamers.

Q. And those lines would help you to see those

(Testimony of J. F. Haglund.)

lines at that distance?

A. I suppose they assisted. [3153—2322]

Q. It was a dark, cloudy night?

A. In the first part of the evening it was a clear night.

Q. Starlight?

A. There were stars out in the beginning of the night but not afterwards.

Q. Now, in view of your reluctance to testify about that hour and a half in the early part of the evening—

Mr. WARREN.—I object to that, your Honor. Those statements are involuntary, not called for, and improper and I move they be stricken from the record.

Mr. OLSON.—In order to save time I will withdraw the statement so far stated. Calling your attention to the time that darkness fell on Wednesday night and the period thereafter until about nine o'clock when you say you left the "Celtic Chief"—

A. I don't know exactly what time I left the "Celtic Chief."

Q. I am merely repeating what you have already testified that you left about nine o'clock.

A. Between eight and nine, I testified to.

Q. All right then. Calling your attention, Captain Haglund, so there will be no misunderstanding, to the time when darkness fell on Wednesday night and the period thereafter until you left the "Celtic Chief" between eight and nine o'clock, are you prepared to testify that it was starlight during the whole of the time? A. No, I am not.

(Testimony of J. F. Haglund.)

Q. You are not prepared to so testify? As a matter of fact, you know, do you not, Captain Haglund, that it was already being clouded over and dark when you left the "Celtic Chief"?

A. Not in the same manner as it was at midnight.

Q. It was clouded over?

A. Not so clouded over that you couldn't see a star out the first part of the evening.

Q. You mean to say there were stars shining at that time?

A. There were stars. I don't say how much shine there was to them. [3154—2323]

Q. Are there any open spaces of any sort in the way of port-holes or apertures of any kind below the poop deck at the stern, at or about the stern of the vessel, "Celtic Chief," I'm speaking of?

A. Is there what?

Q. Any port-holes or apertures, openings at the poop deck below the stern?

A. I don't understand that question clearly.

Q. Very well, I direct your attention to Libellant's Exhibit "I," a photograph of the "Celtic Chief," and I call your attention to a dark square in the belt or line running around the whole of the "Celtic Chief." There are a number of those squares?

A. Yes.

Q. What are they?

A. They are called ports but they are not ports.

Q. There is no opening there at all?

A. There is no hole.

Q. Do you mean to say there are no openings at the side of the vessel? A. I think there are.

(Testimony of J. F. Haglund.)

Q. None at the stern? A. None at the stern.

Q. None whatever?

A. None above the bulwarks.

Q. Now, Captain, in view of the fact that there were no apertures or openings below the poop deck at the stern of the "Celtic Chief," it would have been a comparatively simple thing to have dropped or lowered a seat by means of ropes over the stern and stationed a man there to look out for these tremendously dangerous swells? A. I don't think so.

Q. Why? Would the ropes have broken?

A. You could have got a rope, but I would not send a man in it.

Q. You would not? A. I would not.

Q. Why not?

A. Swell might come by and take the seat.

Q. It didn't occur to you, it doesn't now occur to you, [3155—2324] does it, that it would have been possible to have lowered that seat a distance that would have been safe? A. I wouldn't go that far.

Q. Did you observe any swells that washed up over the poop deck? A. I did not.

Q. So it would have been possible, in the way that she was lying there that night, to have had a man sent over the side and have been safer than the man in the shore boats?

A. I never know, but there might have been a swell that would have swept her deck; not very far from it at that.

Q. But rather than endanger the life of one man seated in a seat lowered in that fashion, you endangered the lives of all the men working in these shore boats?

(Testimony of J. F. Haglund.)

A. That would have been absolutely of no value to have a man stationed in this manner, Mr. Olson. It was all we could do to tend to the fertilizer let alone lowering a man over the side.

Q. It was because you couldn't spare the men?

A. I could spare the men but it certainly would have been a peculiar method of observing the swells.

Q. And why couldn't a man lowered in a seat look after the swells?

A. Because the man in the boat could look out better.

Q. In what boat?

A. In the cargo boats. They were the men who could see the swells more clearly coming than anybody from the ship.

Q. Do you mean to say that the men in those shore boats could see those swells coming in before reaching the stern of the "Celtic Chief" better than a man in the seat?

A. I don't say the whole distance; you couldn't see those swells farther out from the "Celtic Chief."

Q. You say that the men in the shore boats were about amidships of the vessel?

A. They were. [3156—2325]

Q. I now ask you if it wasn't perfectly possible for them to keep a perfect lookout for all of the swells that were coming in in view of the fact that they could see them as far out as the towing steamers?

A. We were in danger for to facilitate the discharging of that ship.

Q. It isn't conceivable to you that you could have

(Testimony of J. F. Haglund.)

gotten your cargo out practically as rapidly and have used care with respect to the coming in of those swells?

A. We did use all the care we could and the fact of the matter was that there wasn't a single boat that was capsized and there wasn't a single man that was injured.

Q. So that it was possible, with the care that you exercised there, to avoid danger to such an extent that no danger was actually suffered, no injury was actually suffered from these swells?

A. In this case there was nobody hurt, to my knowledge.

Q. And those lightering operations extended throughout Tuesday night, all of Wednesday, and all of Wednesday night until about eleven o'clock—is that so?

A. Well, we discharged some of that cargo from the after hatch on the port quarter after eleven o'clock.

Q. Can't you answer my question without telling what you were doing in the way of lightering at various places? Wasn't lightering going on all of Tuesday night, all of Wednesday night—

A. Not all of Tuesday night.

Q. How much of Tuesday night?

A. We knocked off about two o'clock.

Q. And you started in again when?

A. In the morning.

Q. Wednesday morning at daylight? [3157—2326]

A. I won't say daylight, exactly; somewhere

(Testimony of J. F. Haglund.)

about six or seven o'clock.

Q. When did you begin lightering on Tuesday?

A. So near as I can remember, it was before eleven o'clock in the forenoon. I couldn't state to the minute.

Q. About eleven o'clock in the forenoon?

A. Yes.

Q. And that lightering was practically constant from eleven o'clock on Wednesday forenoon until two o'clock, after midnight of Tuesday?

A. Excepting for the time which was occupied in giving the men their meals.

Q. In other words, for from thirteen to fifteen hours your men were engaged in the lightering in the manner that you have described, cargo from the "Celtic Chief" at her sides, from eleven o'clock Tuesday until two o'clock after midnight on Tuesday, a period of from thirteen to fifteen hours?

A. Yes.

Q. And you began after six on Wednesday?

A. About that.

Q. About seven o'clock? A. About that.

Q. And kept it up until about one or twelve, at least?

A. There was an interval at noon for their meals. They had been putting the "Arcona's" lines alongside.

Q. How long was it that you stopped operations on noon of Wednesday?

A. I couldn't state the time.

Q. An hour or two? A. I couldn't state.

Q. You were approximately ten hours, at least, in

(Testimony of J. F. Haglund.)

the daytime of Wednesday, your vessels were engaged, were they not, in taking the cargo from the "Celtic Chief"? A. Well, I wouldn't state.

Q. Wouldn't it be approximately that time? [3158—2327]

A. I don't know how long they were. It was during the noon.

Q. Well, did you lighter as much as one hour on Wednesday?

A. We lightered the whole forenoon, practically, up to eleven o'clock.

Q. Did you lighter as much as one hour after that time before darkness of Wednesday?

A. One? More than that.

Q. Two hours? A. More than that.

Q. Three hours? A. More than that.

Q. Four hours? A. Yes.

Q. So at least eight hours during the daytime you were lightering? A. I think so.

Q. And probably more?

A. I wouldn't say that.

Q. Adding these eight hours to the thirteen to fifteen you have twenty-one to twenty-three hours accounted for. Then from darkness, about half-past six o'clock, until eleven o'clock? A. After eleven.

Q. Until after eleven o'clock. About eleven-thirty? A. Approximately about that time.

Q. During a period of five hours approximately, is that right? A. Approximately.

Q. So that altogether, adding that to the other periods of time that you were engaged in the lightering, the Inter-Island boats were taking cargo along-

(Testimony of J. F. Haglund.)

side of the "Celtic Chief," practically constantly during a period of from twenty-six to twenty-eight hours; isn't that right?

A. I haven't figured that out.

Q. Haven't you heard me figure them up right now? Didn't you testify a few minutes ago that up to darkness Wednesday night, the Inter-Island vessels had been taking cargo from the "Celtic Chief" for an aggregate period of from twenty-one to twenty-three hours? [3159—2328]

A. On Wednesday night?

Q. Up to darkness of Wednesday night.

A. I have given you the figures so near as I possibly can, but I haven't added them up together.

Q. From eleven o'clock on Tuesday until two o'clock after midnight of Tuesday, would be a period of from thirteen to fifteen hours, would it not?

A. That would be fifteen hours.

Q. And on Wednesday, during daylight, eight hours, at least? A. I think so.

Q. That would make twenty-three hours?

A. Yes.

Q. And then five hours on Wednesday night could make twenty-eight hours altogether?

A. Approximately, yes.

Q. Then, for twenty-eight hours in the aggregate, the Inter-Island boats, by means of shore boats, were taking cargo alongside of the "Celtic Chief" in the way that you have described, and, as far as you know, although you were there practically throughout the whole operations and in general supervision of all the Inter-Island work, you know of not one

(Testimony of J. F. Haglund.)

single person being injured through the swells in the course of the lightering and not one boat being damaged by capsizing, isn't that right?

A. So far as I know it is right, yes.

Q. As a matter of fact, you were satisfied that it was unnecessary to take any additional precaution to that you already took to look out for your men and boats? A. I wasn't satisfied.

Q. Isn't it a fact? A. I certainly was not.

Q. Did you take any additional precaution?

A. I did.

Q. What additional precaution? [3160—2329]

A. I had told all the men to be careful.

Q. I'm asking you if you didn't think it was sufficient for your men and boats to take the precautions they did take that night. Don't you regard it as sufficient and didn't you regard it as sufficient?

A. I did take precaution.

Q. I say, isn't it the fact that you regarded it unnecessary to take any precaution in addition to that which was exercised as directed by you throughout those lightering operations?

A. I don't know of any other precaution I possibly could have taken outside of what I did, caution the men to be careful.

Q. Have you testified to the precautions that were taken? Have you stated all the precautions that were taken? A. I don't know.

Q. Kindly state all the precautions that were taken.

A. I don't remember exactly what I have stated word for word.

(Testimony of J. F. Haglund.)

Q. Let's have now a recapitulation of all of the precautions that were taken for the purpose of insuring the safety of their men and boats in the lightering operations out there. Begin again and tell us what was done in order to look out for their safety.

A. I don't understand what counsel means.

Q. You know what precaution means?

A. Yes, I think so.

Q. And you know what danger and safety mean?

A. I think so.

Q. And you understand also that you had certain men on the boats out there, lightering? A. I do.

Q. Now, then, kindly state all of the precautions which you say you took, which were exercised for the purpose of looking out for the safety of the men and boats which [3161—2330] you had at work out there. Now, sum them up.

A. If you allow me to hear what I have already stated, probably I could remember them, tell you if there was any more that I have forgotten.

Q. I want you now to state all of them.

A. You have to repeat the question that you have already asked.

Q. You know what was done there to look out for the safety of the men and the boats; now tell me what was done. A. I have stated that.

Q. I ask the Court to instruct the witness to answer my question.

The COURT.—That's a fair question, I think. I allow the question. Just in a general way.

A. I cautioned the men to be very careful in the

(Testimony of J. F. Haglund.)

handling of this cargo that there would be no accident occur in lowering this fertilizer in the boat which is not a common way, a practical experience among our men, you see, as in our Inter-Island steamers we get that fall on to the steam winch which can be lowered and lifted up very rapidly and altogether much safer than it would be in this case out at the "Celtic Chief," so I cautioned the men not, particularly, to be more careful not to lower the slings too low and strike the men in the boat or injure or capsize the boat, and I also told them to be very careful when they saw any big swells coming in to rather heave the boat astern a little than to run any unnecessary risk which, so far as I know, was observed and carried out.

Q. Anything else?

A. Not that I can think of.

Q. You didn't have a man stationed alongside the rail of the vessel to watch out for things and give signals?

A. I had two men at the rails, one to tend to that particular [3162—2331] purpose of lowering the slingload into the boat and also another man at the burthen fall to tend to that part of it.

Q. Now, is that as much as you cautioned them, all that you did.

A. I think that's about all I can think of and was necessary, too.

Q. How many tons of cargo in all were lightered from the "Celtic Chief" by the Inter-Island steamers by means of shore boats?

A. It was all the small boats *were* were using for

(Testimony of J. F. Haglund.)

that purpose, Mr. Olson.

Q. Aren't those shore boats? Aren't they ordinarily called the Inter-Island steamer's shore boats?

A. We don't call them that, steamer boats.

Q. Kindly understand when I've referred to shore boats in the past I have referred to the small boats. Now then, state how many tons of cargo were taken out of the "Celtic Chief" by the Inter-Island vessels by means of these small boats?

A. I don't remember exactly the figure in tons and pounds, but approximately between three hundred and fifty and four hundred ton.

Q. Three hundred and fifty to four hundred ton?

A. Approximately.

Q. Well, taking the smaller figure, three hundred and fifty as you have already testified, that those slingloads carried about half a ton to a sling that would mean, would it not, that there were at least seven hundred slingloads lowered into your small boats from the "Celtic Chief" in the course of your operations at the "Celtic Chief" by the Inter-Island Steam Navigation Co.

A. I don't know. You are a better mathematician than I am.

Q. If there were three hundred and fifty tons of fertilzer [3163—2332] and a half ton to a slingload, that would be seven hundred slingloads?

A. Seven hundred.

Q. And there was?

A. I wouldn't state that every sling there was half a ton in.

Q. Approximately seven hundred slingloads at

(Testimony of J. F. Haglund.)

least? A. Approximately that, yes.

Q. Each one of which was lowered inside a boat and no man was injured as far as you know and no boat was injured as far as you know, or capsized?

A. Not to my knowledge, no.

Q. That is, what you mean to say is that there was no such injury so far as you know.

A. If there was, I certainly should have heard of it.

Q. And you didn't hear of it? A. I did not.

Q. About twelve hours or so of the lightering that you have spoken of was carried on in darkness, was it not? A. That I haven't figured out.

Q. If darkness fell at about half-past six of Wednesday night and you carried on these operations until two, you would have about seven hours or so of lightering Tuesday night?

A. Approximately.

Q. And five hours on Wednesday night, isn't that right—from half-past six to half-past eleven?

A. Approximately that.

Q. And five and seven are twelve? A. Yes.

Q. So you had about twelve hours of lightering in darkness out of the twenty-eight, the aggregate period of lightering of the Inter-Island Steam Navigation Company? A. That is right.

Q. Did you see any of the "Celtic Chief" anchors?

A. I may have seen them; I don't remember.

[3164—2333]

Q. Well, do you know whether you did or did not?

A. I couldn't possibly state so, no.

Q. You don't remember? A. No.

(Testimony of J. F. Haglund.)

Q. Well, you are familiar with sailing vessels of that character, aren't you?

A. I'm familiar with them.

Q. And you know that they all carry anchors about the same size? A. Approximately, yes.

Q. And what was the size for any vessel of that character? A. Four or five thousand pounds.

Q. Two tons or over? A. About that.

Q. One port anchor and one starboard anchor, isn't that right, bow anchors?

A. As a rule, we carry a spare bow anchor. I don't know what she had.

Q. And they also have a starboard anchor and a port anchor? A. Yes.

Q. And also another, spare anchor?

A. As a rule, we have a spare bow anchor.

Q. Is it possible to carry a two-ton anchor in a small boat? A. Not in one boat.

Q. Rowboat? A. Not that size.

Q. It could be done with two boats?

A. It could be done with two boats.

Q. Using them together?

A. Into a catamaran the same as we do landing machinery. We often lash two or three boats together.

Q. A small scow could have taken it out?

A. If the scow had been of sufficient size, but I don't know as it could have gone over the "Celtic Chief's" bow and taken the anchors off, because the swell was too much there and just about where it was breaking, and it wouldn't be safe to put a scow or boats there for that purpose. [3165—2334]

(Testimony of J. F. Haglund.)

Q. It wouldn't? A. No, it would not.

Q. Well, anchors, two-ton anchors, can be obtained in Honolulu without any difficulty? A. Two-ton?

Q. Yes.

A. Well, there's not many of them, I don't think.

Q. The Inter-Island Steam Navigation Company, in its chandlery department, has some anchors a little larger than that?

A. They have a three-ton.

Q. And those are a part of their stock in trade, aren't they?

A. We got two heavy anchors, I did mention them; they are kept in store for the purpose of the cable landings up along Hawaii.

Q. What are the largest anchors that the Inter-Island has in stock for sale?

A. Well, they have sold them big ones.

Q. How large are those anchors?

A. Somewheres around ten thousand pound, I should think.

Q. Five tons? A. About that.

Q. Now, steel cable is also available and also anchor chain, is it not? A. Yes.

Q. In Honolulu for sale? A. Yes, sir.

Q. Now, it wouldn't have been a matter of any considerable difficulty, would it, to have procured a large anchor like that, also a sufficient quantity of chain or cable to attach to the anchor and have taken a scow and taken that anchor, carried that anchor out to the "Celtic Chief" operations?

Mr. WARREN.—Now, I object to that question as not proper cross-examination.

(Testimony of J. F. Haglund.)

The COURT.—Objection overruled. (Question read.)

Mr. WARREN.—If it's directed to Inter-Island possibilities, then I say I haven't said a word about the Inter-Island doing this.

Mr. WEAVER.—I object to that now on the ground it is not proper cross-examination. [3166—2335]

Mr. OLSON.—There have been so many objections that I now wish to reframe the question. It wouldn't have been a matter of any great difficulty or particular difficulty to have taken an anchor of the kind that you have described and sufficient steel cable, or anchor-chain to attach to the anchor, by means of a scow out to the "Celtic Chief" operations and there have laid it a sufficient distance away from the "Celtic Chief" so as to have given it towing possibilities?

Mr. WARREN.—I object to the question as indefinite. It's a repetition of part of the other question and in other respects it is not.

Mr. OLSON.—I'll offer to reframe the question again. Without referring particularly to the Inter-Island Steam Navigation Company or any other concern, Captain, it wouldn't have been a matter of any special difficulty, would it, to have procured an anchor of the kind which I have described which you say is available here in Honolulu and anchor-chain of sufficient length or cable of sufficient length for that anchor, which you say is also available, by means of a scow out to the scene of the "Celtic Chief" operations and there have laid it a proper distance, accord-

(Testimony of J. F. Haglund.)

ing to your judgment, from the "Celtic Chief," and have attached those lines or chains to the "Celtic Chief" and thus have further means of preventing the "Celtic Chief" from being swung out around broadside on the reef.

Mr. WARREN.—Now, I object to the question as indefinite and not proper cross-examination. In part of it counsel has deliberately ignored that part of it to which I objected before and which he said was understood.

Mr. WEAVER.—I object to it on the ground that it is not proper cross-examination and that the question is indefinite in this, that it may apply either to the Inter-Island or the ship. [3167—2336]

Mr. WARREN.—Object to that as not proper cross-examination.

The COURT.—Objection overruled.

Mr. OLSON.—Now, then, answer the question, Captain.

A. It would have been difficult because there was no anchors to be had in Honolulu, to my knowledge, at that time.

Q. Do you mean to say that the Inter-Island did not have anchors at that time? How large anchors did it have in stock for sale at that time?

A. Approximately a ton.

Q. Is that all?

A. That's all we generally carry in stock in our stores.

Q. What's the heaviest anchor that the "Mauna Kea" carries?

A. They are on board the "Mauna Kea."

(Testimony of J. F. Haglund.)

Q. What is the heaviest? A. Two.

Q. Do you mean to say that the Inter-Island does not carry in stock down here anchors of a size sufficient for the "Mauna Kea"?

A. She got a spare anchor on board.

Q. And so, if she should loose that also, do you mean to—

A. I told you we carry a spare anchor for her. We got two spare anchors.

Q. I say, suppose that the "Mauna Kea" had lost all of her anchors, special and ordinary also; do you mean to say that the Inter-Island wouldn't have anchors for her?

A. I already stated we carry two spare ones on board the "Mauna Kea" and if she lost the four of them we have no more anywhere.

Q. And the Inter-Island didn't have down here in the chandlery department and its warehouse, any anchors of that size? A. No, it did not.

Q. Are you willing to swear that the Inter-Island Steam Navigation Company, in Honolulu, did not have an anchor as large as two tons?

A. I am willing to swear to that. [3168—2337]

Q. When were these five-ton anchors procured?

A. Months after, probably a whole year after, if I remember, after the "Celtic Chief" operations, we got them two big anchors.

Q. Do you know whether or not the Pacific Mail Steamship Company has a warehouse in Honolulu, and whether they keep any anchors there? You know that, do you?

A. As far as I know they have not.

(Testimony of J. F. Haglund.)

Q. What about the Matson Navigation Company?

A. Not to my knowledge.

Q. Do you mean to say there was not another two-ton anchor in Honolulu?

A. Not to my knowledge, but the "Mauna Kea's."

Q. You know that Miller had a five or seven-ton anchor?

A. They used that at the "Celtic Chief."

Q. You know that he had it, don't you?

A. Not in Honolulu, it was out at the "Celtic Chief."

Q. You know he had it at the "Celtic Chief" then?

A. Yes, I know. The weight of it I couldn't state. I believe it was over two-ton, yes.

Q. Well, Captain, there were one-ton anchors available, were there not?

A. There was and we used them.

Q. How's that?

A. And we were using a number of them.

Q. And the Inter-Island Steam Navigation Company, in its chandlery department, carried, at that time, a number of one-ton anchors?

A. A good many, I don't remember the number of them.

Q. And they were sold weren't they?

A. They were for sale.

Q. You have stated, have you not, Captain Haglund, that the two anchors that were used by the "Helene" were laid the same distance as one anchor and would be equal to one anchor of the same weight of the two? A. Yes. [3169—2338]

Q. They would be capable of doing just as well.

(Testimony of J. F. Haglund.)

You've so stated, haven't you? A. I think so.

Q. Wouldn't it have been possible to have taken four or five one-ton anchors by means of a scow in the way that I have stated, with anchor-chains or steel cables, all attached to the same thing out at the "Celtic Chief" operations? I am not now referring to the Inter-Island Steam Navigation Company or any other particular concern, and at the "Celtic Chief" operations have laid those anchors at a considerable distance away from the "Celtic Chief," far enough away to meet with your personal, from an expert standpoint, and have brought those lines or cables or chains aboard the "Celtic Chief" and there have made those fast, and thus have prevented the "Celtic Chief" from swinging around broadside on the reef so that the danger of being bilged would have been eliminated, the danger of being bilged from being thrown broadside would have been eliminated?

A. I couldn't say so. I couldn't state how many anchors there were.

Q. I am assuming there were four or five of these anchors available and if they were if they wouldn't have been able to?

Mr. WARREN.—I object to that as improper.

Mr. OLSON.—I wish to supplement that last question by asking you this question: Are you prepared to say that the Inter-Island Steam Navigation Company had five anchors in stock?

A. I don't know how many.

Q. You know they had some, don't you?

A. I do.

Q. Did they have two? A. Oh, yes.

(Testimony of J. F. Haglund.)

Q. Did they have three? A. Yes, I guess so.

Q. Did they have four?

A. I couldn't tell you how many.

Q. Don't you know they had four or five at least?

A. I couldn't possibly state how many.

Q. Don't you think they had that many?

A. I couldn't state the number. Sometimes our stock runs down. [3170—2339]

Q. Don't you know that four or five or six one-ton anchors could have been easily gathered together in Hawaii? A. I won't state so.

Q. Do you mean to say they wouldn't?

A. I won't state that wouldn't be possible.

Q. You don't think so? A. I say no.

Mr. OLSON.—Then, I offer to prove, if the Court please, that there were at least six such anchors, if not larger ones, that could have been procured at that time in the market by purchasing the same. Now, then, Captain Haglund, answer my question, whether or not that wouldn't have been a practical way of keeping the "Celtic Chief" from being swung broadside on the reef. A. As it was, we had—

Q. Answer my question. I want to find out if that wouldn't have been a practical way.

A. We used a practical way as it was.

Q. That isn't the point. I'm now asking you if that wouldn't have been a practical way to have prevented the "Celtic Chief" from being swung broadside on the reef, to have a number of anchors out and put them in the way that I have described to you, would it or would it not be a practical method?

A. If the anchors was already in use out there

(Testimony of J. F. Haglund.)

couldn't hold the "Celtic Chief," I don't think in this particular case that two or three more would have done it because we could not have laid them. It wouldn't have been a possibility to get anchors aboard of that ship if the swell had raised up any higher than it was. That's how I claim that that wouldn't have been practical.

Q. Well, under the conditions that prevailed out there as to sea and wind, wouldn't it have been perfectly practical to have kept the "Celtic Chief" from going broadside on the reef?

A. We did keep her from going broadside on the reef. [3171—2340]

Q. That isn't the point. Kindly answer my question as to whether or not that would have been a practical way. Don't avoid the question I'm asking you. I want to know if that would be a practical way.

Mr. WARREN.—I object to remarks of that sort in the first place, and in the second place I say that the witness has already answered the question and it's nothing more or less than a question already asked and answered. I move to strike from the record counsel's statement to the witness, "Now, you stop avoiding my questions."

The COURT.—I'm not considering—I'm drawing conclusions, of course, as to the character of the witness and his attitude. All that is, of course, in a certain way, argumentative. Mr. Olson is entitled to have the question answered if it isn't answered by the witness, though I think the polite method would be to apply to the Court.

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(Testimony of J. F. Haglund.)

Mr. WARREN.—I understand my motion is denied.

The COURT.—I'm not sure that the witness clearly understood the question or that he avoided the answer deliberately or anything of that sort. It's clear, of course, that he didn't answer it. Mr. Olson was endeavoring to get a general statement while the witness was taking the special, referring to these special conditions.

Mr. WARREN.—I'll accept that view of the Court and proceed.

Mr. OLSON.—Very well then, answer my question, Captain Haglund.

Captain Haglund, now kindly answer the question whether or not that would have been a practical way of keeping the "Celtic Chief" from going broadside on the reef.

A. It would not have been the most practical way.

Q. That isn't the answer that you are asked to give. Kindly state whether or not it would have been a practical way entirely aside from the question— [3172—2341]

A. It would not have been a practical way when there was other available just as effective and more quicker ways to be had.

Q. Leave that out of consideration. Would that have been a practical way?

Mr. WARREN.—Object to the question as asked and answered.

The COURT.—The question is not answered yet.

A. It would if there was no other agencies available.

(Testimony of J. F. Haglund.)

Q. Don't you know, Captain Haglund, that the way in which the "Manchuria" was brought off of the reef on the other side of the Island was by means of anchors and that they had six or seven anchors laid out there and practically she was brought off by means of so many anchors?

A. It was the help of the towing steamers.

Q. What towing steamers were there?

A. The cable steamer and the "Manning."

Q. Don't you know that the work that was done there was by means of anchors?

A. Undoubtedly.

Q. And that they had six or seven or more anchors laid? A. I don't know how many.

Q. Don't you know that out at the "Sheridan" there was, they had a large number of the anchors laid which were being heaved in on for the purpose of bringing her off? A. I do.

Q. You know that was the chief means of getting her off?

A. But the "Sheridan" was not on the shore.

Q. Can't you confine yourself to the question that I'm asking you, whether or not it was the chief means of getting her off?

A. It was, I acknowledge that. In addition I say that all anchors that were put around the "Sheridan" would not possibly pull her off unless it was light enough, discharged and lightened.

Q. It's your opinion, is it not, that the "Intrepid," and the [3173—2342] "Mikahala" and the "Likelike"—I'm now expressly leaving out of account the Miller anchor—and the "Helene" and

(Testimony of J. F. Haglund.)

the "Mauna Kea," that those three vessels would have been able to have kept the "Celtic Chief," under conditions that prevailed out there, from canting around broadside on the reef?

A. I don't know whether they could or not.

Q. What is that?

A. I don't know whether they could or not.

Q. You don't know? A. No.

Q. It would have been easier to keep her from canting around broadside than it would to have pulled her off the reef. In other words, it would have been easier to keep her straight in line directly on the reef than to have actually pulled her off the reef? A. I think so.

Q. You think so?

A. I think it would be probably easier to keep her in position than to pull her off.

Q. Well, then, don't you know that with one or two one-ton anchors laid out astern, a little bit, and somewhat to the starboard, would hold, would have been all that was necessary to keep her from canting broadside on the reef? A. I would not say so.

Q. Don't you believe so? A. I don't.

Q. What was it that kept her from going broadside on the reef?

A. It was the agencies of the "Helene," in addition to her steam power, her two anchors laid out a great distance and acting exactly as a mooring and there was the power of the "Mikahala's" towing in addition to that.

Q. Now, then, don't you think that the "Helene's" anchors would have been much more effective in

(Testimony of J. F. Haglund.)

keeping her from canting broadside on the reef if, instead of being laid to the port side of the "Celtic Chief" they had been to the starboard side of the "Celtic Chief"? A. Well—

Q. Isn't that so?

A. It probably would have made [3174—2343] a little difference but it was so near astern it wouldn't have made material difference.

Q. How many points to stern?

A. Only one point.

Q. And that's eleven degrees?

A. Eleven degrees and a half.

Q. Now, then, that means that she was, if anything, tending to pull the "Celtic Chief" further to broadside, to her port, than otherwise?

A. Well, if anything.

Q. So that, if it had not been laid even that small angle, one point to starboard of the "Celtic Chief," it would have had a better tendency, or greater tendency, to prevent the "Celtic Chief" from canting broadside on the reef; isn't that true?

A. Yes, that's true. In the positions them boats were already occupying the "Helene" couldn't get on the starboard quarter.

Q. Leave the "Mikahala" out of account. Suppose the "Mikahala" hadn't been there, wouldn't the "Helene" have been in a better position?

A. If no other agencies had been there I admit it would have been better if the "Helene's" anchor had been placed a point to windward of the "Celtic Chief" rather than to leeward. I admit that.

Q. Now, then, what were the sizes of the

(Testimony of J. F. Haglund.)

"Helene's" anchors?

A. The "Helene's" anchors were approximately two thousand pounds each.

Q. One-ton anchors, weren't they? A. One ton.

Q. If there had been two one-ton anchors laid at an angle to the "Celtic Chief" with lines attached to her, wouldn't they have been effective to keep her from going broadside on the reef?

A. That all depends what purchase had been put on them anchors.

Q. Don't you think it would have been possible to have [3175—2344] put a purchase there not nearly as complicated as was the Miller Salvage Company's and then by means of the winch to have heaved in on those tackles and kept her from going broadside on the reef? Don't you think it would have been possible with the donkey-engine, the McCabe, Hamilton & Renney donkey-engine?

A. They had to put that donkey-engine on board the ship.

Q. Couldn't that have been done?

A. Yes, but during that time the "Celtic Chief" would have time to go half a dozen times on the reef.

Q. You think it would have time for that?

A. Perhaps it would not take long for the "Celtic Chief" to go on the reef if no agencies had been there.

Q. How heavy was the donkey-engine, would you say, that was brought out on that scow?

A. I couldn't possibly state the exact weight of it.

Q. As near as you can give.

A. Maybe seven tons.

(Testimony of J. F. Haglund.)

Q. It wouldn't have been a serious matter to have brought that on board? A. I don't think so.

Q. If it had been brought on the "Celtic Chief" it could have been used for the purpose of heaving in on anchor-chains quite easily?

A. I wouldn't state that.

Q. It could be done without any serious difficulties? A. It could be done.

Q. So that, it would have been a fairly simple thing to have heaved, to have gotten anchor-chains to two one-ton anchors at the angle of the "Helene"?

A. Not so very simple.

Q. It could have been done without serious difficulties?

A. Under the conditions it could have been done.

Q. If that could have been done, it could have been done on Monday?

A. I don't know. I wasn't [3176—2345] out there at all times on Monday.

Q. Under the conditions that prevailed while you were out there?

A. I couldn't state positively that it couldn't be done.

Q. Don't you think it could have been done?

A. Perhaps it could.

Q. Couldn't it have been?

A. I wouldn't positively say.

Q. What do you think? Do you or do you not think it could have been?

A. I think it could have been done if it had to be done.

Q. All that they would have to do, wouldn't it,

(Testimony of J. F. Haglund.)

would be the rigging of a purchase-tackle or not more than one tackle, on board the "Celtic Chief" and getting a donkey on board of the kind that was used by the Inter-Island brought out from McCabe, Hamilton & Renney, attach the tackle to the chain and it could then heave in?

A. Well, and in the meantime what would have become of the "Celtic Chief"?

Mr. OLSON.—Move to strike that last statement of the witness on the ground it is not responsive.

The COURT.—I order it stricken.

Q. How long did it take the Miller Salvage Company to get its anchor laid and its line aboard the "Celtic Chief"?

A. I couldn't state the exact time.

Q. Well, about. Remember, Captain, I'm not asking you to state exactly unless you are able to do so. In each case I want you to state approximately or exactly whichever it happens to be possible for you to do.

A. So far as I know it took half the whole day and then they didn't have the line taut.

Mr. OLSON.—I move to strike the last statement of the witness on the ground it is not responsive.
[3177—2346]

Mr. WEAVER.—I move that be stricken out as not responsive. I think the whole answer ought to be stricken out.

Mr. WARREN.—I object to the whole—

Q. State, Captain Haglund, how long it took, approximately, as near as you can tell, for him to get his anchor laid and the anchor line aboard the "Celtic Chief." I am not now speaking of getting taut.

(Testimony of J. F. Haglund.)

A. Well, I don't remember the time when that line came aboard, whether that was morning or noon or afternoon.

Q. Don't you know that Captain Miller started to take the anchor from the first position to the second after daylight of Wednesday? A. I know that.

Q. Don't you know it was after eight o'clock?

A. No, I don't.

Q. Was it about eight o'clock?

A. I couldn't positively say.

Q. Was it about seven or eight?

A. It was before seven o'clock when he left the "Celtic Chief," but how long it took him to lift that anchor up and go down and get the line I can't possibly state.

Q. Don't you know that having left the "Celtic Chief" about seven o'clock or earlier that he had his anchor laid and the anchor line actually on board of the "Celtic Chief" somewhere in the neighborhood of noon?

A. I've said I don't know whether it was morning or noon or afternoon. It may have been as late as one o'clock; may have been earlier than that.

Q. Well, it was about noon, within an hour or so on either side?

Mr. WARREN.—I object to that as asked and answered.

A. I don't think that line was aboard before noon but it may be possibly aboard there after noon, maybe an hour, maybe two hours. [3178—2347]

Q. Don't you remember it was more than two or three hours? A. I don't remember.

Q. Don't you remember that it was on board the

(Testimony of J. F. Haglund.)

"Celtic Chief" by the middle of the afternoon on Wednesday? Do you mean that you don't remember now? A. Oh, I was—

Q. Isn't three o'clock about the middle of the afternoon? A. I didn't say three o'clock.

Q. It was on at least by three o'clock, wasn't it?

A. Yes.

Q. And that was an anchor over five tons?

A. I don't know the weight of it.

Q. You saw the anchor?

A. I seen the anchor but I never saw it weighed.

Q. You can tell from its size. It was a large anchor?

A. It was a large anchor, but the weight—

Q. It was at least four times as large as an ordinary one-ton anchor? A. I think it was.

Q. An anchor as large and bulky as that would be more difficult to handle than a one-ton anchor; more difficult to lay and carry around?

A. That all depends on how it's handled; maybe an anchor twice as heavy as another anchor and maybe laid more easily.

Q. I'm asking under the same conditions?

A. Under the same conditions, yes, it certainly would.

Q. How long did it take the "Helene" to get her anchor chains taut? A. Just a few minutes.

Q. What kind of an engine did it use for the purpose of heaving in on those chains?

A. Steam engine.

Q. What kind of an engine?

A. I don't know what you call it.

(Testimony of J. F. Haglund.)

Q. Is it a donkey-engine?

A. An independent windlass and engine combined; we connected with her steam engine.

Q. Use any purchase-tackles?

A. Nothing else but the [3179—2348] windlass.

Q. Just describe that windlass, please.

A. How do you mean by describe?

Q. Tell what it is.

A. It's a steam windlass with gypsy-heads on her and also tubes, I judge two feet, over a foot, as the windlass was hove in the chain come in accordingly.

Q. Do you know the horse-power of that windlass?

A. Approximately forty-five.

Q. Do you know the horse-power of the McCabe, Hamilton & Renney donkey? A. I don't know.

Q. Didn't you see the engine itself? A. No.

Q. You didn't see it? A. I saw the boiler.

Q. Have you no means of judging how powerful an engine it was?

A. I have not. I'm not very familiar with engineering. It is out of my line of business and I don't care to go into anything I don't understand.

Q. Well, you know, don't you, that there are a number of donkey-engines in Honolulu with a horse-power of forty-five horse-power that are available?

A. I couldn't state.

Q. You can't state that?

A. I can't state that. I don't know.

Q. Well, if a donkey-engine of forty-five horse-power were rigged up on the deck of the "Celtic Chief" and anchor-chains from two one-ton anchors

(Testimony of J. F. Haglund.)

had been run aboard the "Celtic Chief," with such an engine, with a donkey-engine of that forty-five horse-power, it would have been possible to have hove in those anchors?

Mr. WARREN.—I object to that as improper.

Mr. OLSON.—I offer to prove that such a donkey-engine [3180—2349] was available in Honolulu at that time.

The COURT.—I think that's a fair test.

Mr. OLSON.—Now, answer the question. With a forty-five horse-power engine, an engine just as powerful as the appliance, engine, which was used for heaving on those anchor-chains, rigged on the "Celtic Chief," wouldn't it have been possible to have gotten anchor-chains to two one-ton anchors laid to the, anywhere on the "Celtic Chief," as taut as the "Helene's" anchor-chains?

A. I couldn't tell you that.

Q. You don't know? A. I don't know.

Q. Why don't you know?

A. Because I don't know how that could be rigged to get that same power on the "Celtic Chief."

Q. Well, if it could have been rigged on the "Celtic Chief" in such a way that its forty-five horse-power, just as the "Helene's" horse-power, was available, wouldn't it have been quite possible to have gotten those chains as taut as the anchor-chains of the "Helene's" anchor-chains were?

A. Not in the same length of time.

Q. After the engine was rigged?

A. If it could be rigged.

Q. And after it had been rigged?

(Testimony of J. F. Haglund.)

A. No, not the same length of time.

Q. Why not?

A. Because the "Helene's" windlass revolved probably a hundred and odd revolutions a minute.

Q. Would it have been possible to have gotten a windlass on board of the "Celtic Chief" of the same kind to operate in connection with the donkey-engine? A. No, I won't state so.

Q. Well, if it had been possible?

A. I don't know where they could have placed it. I don't [3181—2350] think so.

The COURT.—Mr. Olson, I understand you are going to prove that they were available.

Mr. OLSON.—Yes, certainly.

Q. Now, then, Captain Haglund, if they had taken another it would have been possible in the course of a few hours, at any rate, to have gotten this other engine on board the "Celtic Chief"?

A. Quite a few hours.

Q. Within a few hours?

A. Within a few hours.

Q. Within a day?

A. I know they couldn't have got that windlass fastened—

Q. I say, after the appliances are rigged on board the "Celtic Chief," after they are rigged and in shape, couldn't the anchor-chains have been hove in as taut as the "Helene's" within a comparatively short period of time?

A. If all similar appliances had been available.

Q. The donkey-engine you say would operate as rapidly as your windlass?

A. I don't understand what you mean, Mr. Olson.

(Testimony of J. F. Haglund.)

Q. Did the "Helene's" engine operate by means of a gypsy-head—did it have a gypsy-head around which the anchor-chain wound? A. No.

Q. Explain.

A. I have already stated that.

Q. Let's have it again.

A. A windlass of this class is made up of four different valves, the larger gypsy-head and the two which is fixed to fit the links of the chain so as fast as it is revolved the chain is coming in.

Q. Well, go on.

A. That's all I can state.

Recess.

Q. You say you had a number of donkey-engines out at the "Sheridan" while the "Sheridan" was on the reef or ashore, rather. Who had charge of those salvage operations, the anchors, I mean?

A. A man from the coast that [3182—2351] come down the latter part of the time he was out there. I can't recall his name.

Q. Well, did they manage to get those anchor-chains taut or the cables that were used in connection with those anchors taut?

A. There were no cables used.

Q. What did they use in connection with their anchors? A. Wire.

Q. Did they manage to get those taut?

A. Yes.

Q. How did they do it?

A. With purchases they rigged up.

Q. And those were operated by means of tackles?

A. Steam donkey.

(Testimony of J. F. Haglund.)

Q. Do you know how long it took Miller to get his purchase rig on board of the "Celtic Chief"?

A. I couldn't tell you.

Q. Don't you know that was all rigged by evening of Wednesday?

A. I know it was rigged on Wednesday evening, yes.

Q. Do you know how long it took?

A. How long it took, I don't know.

Q. And if it hadn't been so big and complicated, it could have been rigged in a short time?

A. Yes.

Q. Now, when they were rigging any of those lines out there at the "Sheridan," they had a donkey operating for each line, didn't they? A donkey-engine for each line, didn't they? Each wire line?

A. Well, they had—I cannot state they had. They may have used two falls to every winch, you see, and fixed, put each fall on two different wires, because they were so many rigged out there that I don't remember now. [3183—2352] How many donkeys they were I don't remember. How many wires or how many anchors, I don't know. There was a great number of them?

Q. With a donkey such as they had on the "Sheridan," which were all brought from Honolulu—

A. No, they were brought from San Francisco.

Q. All of them?

A. So far as I know, they were brought from San Francisco.

Q. How do you know they were?

A. I saw them come in the transport.

Q. You've seen similar donkeys here?

(Testimony of J. F. Haglund.)

A. I won't say.

Q. All of them were similar donkeys of that general kind? A. Yes.

Q. And there are in Honolulu at all times—

A. Yes, there are some of them.

Q. McCabe, Hamilton and Renney have a number of donkeys?

A. They have a number of donkeys, but whether they are so powerful, I couldn't positively state.

Q. But McCabe, Hamilton and Renney, the stevedore concern, have a number of donkey-engines of *various and* sizes?

A. Approximately the same size and power, so far as I know.

Q. Now, a purchase tackle could have been rigged on the "Celtic Chief" on Monday, could it not, and a donkey-engine placed aboard to operate the purchase tackle which would have been sufficient to make cables or lines running out to these two anchors that I have suggested being laid at an angle, sufficient to make them taut, couldn't they?

A. Well, I couldn't state whether they could or not.

Q. Don't you think so according to your best judgment?

A. I don't think it would be an impossibility by any means. [3184—2353]

Q. If the blocks and lines had been available and if the donkey-engine had been available, it could have been done according to your best judgment?

A. I think it could have been done.

Q. Yes, all on Monday. Now, with two anchors rigged in that fashion, if it had been done on Mon-

(Testimony of J. F. Haglund.)

day, it would have, according to your best judgment, have prevented the "Celtic Chief" from canting around broadside on the reef under the conditions that prevailed there up to Wednesday night when she finally came off?

A. I couldn't tell whether it would or not.

Q. According to your best judgment?

A. I hardly think so.

Q. You think the wind and currents would have been sufficient to have carried those lines away or to have broken the anchors and made them drag?

A. Not the wind and current alone, but the wind and current and the swell combined.

Q. Did it make the "Helene" anchors drag?

A. No.

Q. What was it that prevented the "Celtic Chief" from canting around directly in line with the "Helene" so that she would have been, instead of one point to the leeward, she would have been directly astern?

A. That angle and that distance, Mr. Olson was very slightly—

Q. What prevented it?

A. The "Mikahala" and the "Intrepid" being on the quarter and they the "Mikahala" and the "Intrepid," pulling on their propellers alone were sufficient to prevent the "Celtic Chief" from canting around.

Q. Although you don't think these two one-ton anchors would have accomplished that same result?

A. Because it would have been less than the agency that was out there. [3184—2354].

Q. You think that two one-ton anchors laid with

(Testimony of J. F. Haglund.)

strong steel cables, cables as strong as the "Mikahala's" line and the "Intrepid's" line, or stronger, would have been insufficient to prevent her canting around to the reef or to port although the "Mikahala" and "Intrepid" were sufficient to prevent her from so canting around so she would have been directly in line with the "Helene"?

A. It might have been.

Q. Now, from all your experience and your best judgment and your common sense, don't you know if the "Mikahala" and the "Intrepid" by means of their propellers alone were able to keep the "Celtic Chief" from canting around in that way, don't you know that two one-ton anchors laid with lines as strong as the lines of the "Mikahala" and the "Intrepid," would have been sufficient to do the same thing?

A. I don't say the "Mikahala" and the "Intrepid" kept her.

Q. What did keep her?

A. The "Helene's" moorings.

Q. Didn't you say that the "Helene" was one point to lee?

A. That angle is so small that the "Mikahala's" bigger anchor and the "Intrepid's" would overcome it.

Q. Don't you know that the "Mikahala" didn't use her anchor for the purpose of holding the "Celtic Chief" at all?

A. That didn't prevent her from using it for—

Q. Don't you know the fact to be that she didn't use it for that purpose?

(Testimony of J. F. Haglund.)

A. No, I won't state it wasn't for that purpose.

Q. Who was the captain of the "Mikahala"?

A. Captain Tullock.

Q. And if Captain Tullock testified as you heard him testify here, that her anchor was used for the purpose of pulling on the "Celtic Chief," are you prepared to say that he was incorrect in so stating? [3186—2355]

A. No, I'm not.

Q. Are you prepared to say that the "Mikahala" did use her anchor for holding the "Celtic Chief"?

A. I could not state that Captain Tullock was right or wasn't; whether he hove in on that anchor at all or whether he lost the anchor.

Q. When was that she lost her anchor?

A. During operations.

Q. That was done when he attempted to heave it up?

A. That's heaving on the anchor.

Q. Is that what I was talking about when we were speaking of the matter of pulling on the "Celtic Chief"? Did you know he lost his anchor in the attempt to heave it up?

A. He never got within twenty fathoms of his anchor.

Q. Don't you know—

A. He put an extra strain on it.

Q. Don't you know Captain Tullock says he didn't use it that way?

A. It wasn't laid for that purpose.

Q. Don't you know Captain Tullock says he didn't use it that way?

A. I don't know.

Q. If he so testified are you prepared to say he was incorrect?

A. No.

(Testimony of J. F. Haglund.)

Q. You, of your knowledge, don't know that the "Mikahala" ever used the anchor for the purpose of pulling on the "Celtic Chief" except in so far as it hove in on that anchor when it broke it?

A. I do know I seen the "Mikahala's" chain taut ahead of her.

Q. You know that anchor was laid to windward of the "Mikahala"?

A. Exactly in the proper place it should have been laid in.

Mr. OLSON.—I move to strike the last statement on the ground it is not responsive. [3187—2356]

The COURT.—Motion granted.

Q. Now, you know, Captain Haglund, do you not, that if any of the Inter-Island steamers' towlines had broken that they could have hove in on their anchor chains, laid as they were, sufficient to prevent those steamers from colliding with any of the others. Don't you know that?

A. I don't know whether it would have been a great deal of room to spare. I don't think so. If the "Mikahala" would be clearing the "Arcona."

Q. If the "Mikahala" had been swept by the current down toward the "Arcona," don't you know that they could have hove in sufficiently on her anchor chain to prevent any damage through their coming together?

A. If the engine had been disabled what was to prevent the "Mikahala" from piling right on top of her?

Q. I'm asking you if you don't know, if the "Mikahala" line had parted and I'll add to that, and her

(Testimony of J. F. Haglund.)

towline gotten afoul of her propeller, don't you know that the "Mikahala" could have hove in sufficiently on her anchor chain to have pulled her clear of the "Arcona"? A. No.

Q. You don't think that was possible?

A. She would have dragged her anchor.

Q. She couldn't have done much towing by means of that anchor on the "Celtic Chief," if it had been insufficient to pull the "Mikahala" through the water without the anchor dragging.

A. She had thirty fathom of chain as it was, but in order to clear the "Arcona" she would have had to heave in considerable of that chain and she would have dragged her anchor and she would have drifted right down on top of the "Arcona."

Q. The "Arcona" wasn't using her propeller?

A. No.

Q. She could have gotten out of the way if there was danger?

A. She could not. [3188—2357]

Q. Didn't she start her propeller and get out of the way so that the "Celtic Chief" didn't hit her?

A. Not until the "Celtic Chief" was close on top her.

Q. How long did it take the "Celtic Chief" to travel the six or seven hundred feet? How long do you think?

A. It didn't take a great deal.

Q. How long do you think?

A. I don't know. I couldn't very well state that. I don't know what the rate of speed she could have gone.

(Testimony of J. F. Haglund.)

Q. Can't you give us an idea as to whether it took an hour or a minute?

A. Well, it took more than a minute and I said it didn't take so much as an hour.

Q. Was it nearer a minute or nearer an hour and half an hour? A. Nearer a minute.

Q. Fifteen minutes. A. Nearer a minute.

Q. Or ten minutes? A. I think so.

Q. Five minutes? A. That I couldn't state.

Q. Why didn't you say that at the start.

A. I don't know.

Q. Now, it was five minutes. Your best judgment is that it was?

A. My best judgment is that it was about that.

Q. And if the "Arcona" had attempted, or had observed the "Mikahala's" line broken, wouldn't it have been possible in three or four minutes time for her to get her propellers going and gotten out of the road?

A. We didn't have three or four minutes to spare there.

Q. That isn't what I asked. Could she have done it?

Mr. WARREN.—I object then, it's immaterial, your Honor.

The COURT.—I allow the question.

Mr. OLSON.—Answer the question. Couldn't she have done that in three or four minutes, the "Arcona"?

A. I couldn't state that. [3189—2358]

Q. You don't know.

A. If the commander of that ship had been on

(Testimony of J. F. Haglund.)

board the "Arcona" at the time, I don't think for a minute the "Celtic Chief" would have come anywhere near to her.

Q. I'm asking you if you think if the "Mikahala" had been observed by the "Arcona" to have broken her line, wouldn't it have been possible for the "Arcona" to have got her propeller going?

A. If the commander had been on board of the ship.

Q. Could she have done so?

A. Certainly, she could.

Q. So that any serious difficulty could have been avoided by the "Arcona's" getting out of the road?

A. I won't say that.

Q. You won't say that? A. No.

Q. On your Inter-Island steamers, where is the engineer, the engineer who is on watch there, the chief or the assistant? Where is he supposed to be while he is on watch? A. In the engine-room.

Q. And that is so he can obey any signal upon the signal being given? A. Suppose to be; yes.

Q. Isn't that what the Inter-Island engineers are supposed to do also? A. Yes.

Q. And so far as you know they do their duty?

A. So far as I know; yes.

Q. Then when you testified on direct if a hawser parted that it would take a few seconds only provided the engineer was where he could get to his engines, didn't you mean also to say that as a matter of fact, the engineer being where he ought to be, that any one of the steamers could have been stopped in a few seconds?

(Testimony of J. F. Haglund.)

A. So far as I know. [3190—2359]

Q. You don't mean to say that the engineers of the Inter-Island steamers are called away from their engine while on watch?

A. I don't mean to say that; what I do mean to say is that his duty very often calls him over to look after his bearings; sometimes he has to go to the forward part of his boilers and consequently, it may take minutes before he could get to his machinery and stop it.

Q. How large is the engine-room of the "Mikahala"?

A. Well, as a rule, the engine-room in our smaller boats are pretty well crowded up and it would be more of a difficult matter to hurry than in a larger boat.

Q. Do you think that the engineers in all your boats in the course of their duty would be apt to be in a position where it would take them a minute to get out and go to their throttle?

A. They may have been in a place where it would take them a minute.

Q. What's suppose to happen to the engine in the meantime, supposing a quick signal was sent down there?

A. It had to be answered so near as possible.

Q. And your engine-rooms are so equipped both as to engineers and machinery that the engineer is apt to be now and then in places where it will take him a minute to get to his throttle?

A. All depends where he is and what he is doing.

Q. What do you do in case of an imminent colli-

(Testimony of J. F. Haglund.)

sion? Isn't your engineer supposed to be where he can answer the signals?

A. I thought you were referring to a steamer lying in port.

Q. I am asking if they were going to sea, what about it?

A. They are down in their engine-room.

Q. Aren't they where they can hear all signals given down there in case of a collision for example?

A. He's supposed to be as attentive to the engine as he possibly can be. [3191—2360]

Q. Do you mean to say that your engineers are in positions at times while they are at sea where it might take them a minute to get to the throttle?

Mr. WARREN.—I object to the question; it is different.

The COURT.—I will allow the question.

The WITNESS.—What was the question.

(Question read.)

A. Yes, they might.

Q. Now, what would happen in case of an imminent collision, if there were a signal to the engine-room to reverse the engine? Under those conditions it would mean, wouldn't it that the engines wouldn't be reversed and the collision would probably happen? A. It certainly would.

Q. And you mean to say that your engineers in the course of their duty while on voyage are in positions where they subject the vessels to that danger at times?

Mr. WARREN.—Same objection.

The COURT.—Same ruling.

(Testimony of J. F. Haglund.)

A. There's other positions beside standing by the throttle and reversing.

Q. And your engine-rooms are so equipped and so crowded that the throttle at times, in the course of duty, can be reached only within a minute's time?

A. I don't say so.

Q. Haven't you so testified?

A. That they couldn't be reached, you say.

Q. Yes, I say so that at times the throttle couldn't be reached within a minute's time?

A. If the engineer is doing a certain kind of work forward in the boiler, it may take him possibly a minute before he could stop and reverse his engine.

[3192—2361]

Q. And he's supposed to be doing that kind of work where signals requiring instant action are apt to be given?

A. He's supposed to do and tend to all his different duties.

Q. Now then, particularly are towing on a vessel ashore and a number of vessels around in more or less proximity, wouldn't it be the *beauty* of the engineer to be within reach of his throttle so that he could get to it upon a second's notice at all times?

A. Maybe so if he was out in the open ocean and nothing in his way.

Q. So that when the danger from towlines is reduced to actuality, there wasn't any considerable danger to any of the towing steamers?

A. Oh, yes, there was a great deal of danger just the same, yes.

Q. Notwithstanding the fact you testified on

(Testimony of J. F. Haglund.)

direct that the Inter-Island steamers were not in any great danger?

A. Outside of that, of getting their propeller, foul of a line.

Q. Nothing like that did happen?

A. I don't know if other lines parted outside the "Mauna Kea's" and she had the tendency to swing her clear.

Q. Her lines didn't get caught in her propeller?

A. Not in the manner the "Mauna Kea's" line was fast.

Q. The "Mauna Kea's" line didn't get caught in its propeller? A. Not that I know of.

Q. So that the "Mauna Kea" by means of her propeller could have steamed out of the road of the other steamers if there had been a steamer to leeward?

A. It all depends where the other steamer would be lying.

Q. Within a hundred and fifty or two hundred feet of her, then what? A. It may be all right.

Q. Don't you think that under those conditions the "Mauna Kea" could have steamed out of the road? [3193—2362] A. I couldn't say.

Q. With all your maritime experience you are unable to form any judgment as to whether or not the "Mauna Kea," according to your judgment would have been able to get out of the way without taking the steamer to the leeward?

A. According to my judgment?

Q. According to your maritime experience.

(Testimony of J. F. Haglund.)

A. Barring no accidents she would have got out clear.

Q. Did she have any other than that her line parted? A. Not to my knowledge.

Q. Was there any other accident except that her line parted? A. Not that I know of.

Q. How much was the winch of the "Celtic Chief" used by the Miller Salvage Company after eleven o'clock on Wednesday night?

A. It was used occasionally, so far as I remember, every time I looked *at between* eleven o'clock and half-past eleven.

Q. Was it used after half-past eleven?

A. It might have been.

Q. You don't know?

A. I don't remember. I won't be positive to state so.

Q. Do you know whether it was used by the Miller Salvage Company at the time the "Celtic Chief" actually began to move off the reef? I mean when it was perceptible on the vessel itself?

A. That I don't know because it was on the poop.

Q. Isn't the winch within clear view?

A. I didn't observe the winch.

Q. You could see the winch all the time? It could be seen from the poop?

A. It could be seen from the poop. You could see the bars.

Q. Why did you say a few minutes ago that you didn't observe it?

A. My attention wasn't called [3194—2363]

(Testimony of J. F. Haglund.)

to the winch at all. I had other duties to tend to at that time.

Q. Now, you didn't observe the preventer that Miller used, the Miller Salvage Company used in connection with its line with reference to the tackle—I mean the shackle? You didn't observe that, did you?

A. It was hove through the shackle and back aboard the ship.

Q. Did you see that? A. I *say* it done.

Q. Why did you testify on direct that you didn't see that?

A. I saw them heave the shackle up with the boat on the end line as we call it.

Q. When was that? A. On Wednesday.

Q. What time? A. I don't know.

Q. Daytime or night-time? In the daytime, wasn't it? A. Certainly.

Q. Did you examine that?

A. I did not examine anything.

Q. Do you know how it was fastened to the shackle from your actual observation?

A. Rove through the shackle.

Q. Did you know how it was rigged with reference to that shackle yourself? I don't want you to tell me how it was rigged. I want to know whether you know or not from your own observation. Do you know how it was attached to the shackle?

A. I know that the two ends led aboard the "Celtic Chief."

Q. Do you know how that was attached to the shackle? A. The mouth of the shackle—

(Testimony of J. F. Haglund.)

Q. Don't tell me how it was attached. I want to know if you know how it was done.

A. I don't know. I don't remember whether it was rove to the lock or to the pin. The shackle was rove, I don't know how far from the "Celtic Chief"; maybe one hundred feet, maybe two hundred feet.

Mr. OLSON.—I move to strike on the ground—withdraw [3195—2364] my motion.

Q. Do you mean to say that you did not observe that line at the other end down near the shackle at all?

A. I observed where the boat had it heaved up.

Q. Where did you see that?

A. I saw them heaving the wire line through.

Q. Do you know whether or not it was fastened any other way? A. I could tell—

Q. All I want to know is whether it was fastened any other way?

A. I know the end come on board.

Q. I'm asking you whether you know whether it was fastened any other way?

A. How could it be fastened any other way? The boat didn't stop there long enough.

Q. I'm asking you to state whether you know it was fastened any other way.

A. I don't understand the question.

The COURT.—Mr. Olson asks, as I understand the question, if this could be fastened any other way.

A. I don't see how it is possible for any other way.

Q. Did you see?

A. I didn't see because the boat was lying between, but I saw the end of the wire brought aboard

(Testimony of J. F. Haglund.)

and I also know that to do that it would take time. The end of the wire came aboard with the boat, did not slack up the shackle and hold it up, and how could it be any other ways than just rove through.

Q. The truth of the matter is you don't know from your own observation?

A. I could not state so.

Q. And you didn't see it afterwards or any other time? A. Not afterwards.

Q. So that all of your testimony with reference to the method of that wire being attached to that shackle is purely your conclusion, your judgment? [3196—2365] A. My judgment.

Q. Because you think the wire was—

A. I saw the wire attached.

Q. That isn't the point. Having seen the two ends of this wire on board the "Celtic Chief" as you have testified repeatedly, although I haven't asked for that point, did you see how the line itself was shackled to the shackle? Was it attached to the shackle from actual observation, or is your testimony only the opinion that it was, simply your conclusion?

A. The only possible way it could have been possibly done.

Q. That isn't the point, and I ask the Court now to instruct the witness to state whether or not he observed or whether or not he is only reaching a conclusion.

The COURT.—Mr. Olson is entitled to an answer to show how much of your statement is based on knowledge.

(Testimony of J. F. Haglund.)

The WITNESS.—If your Honor please, there is no block used that I know. There is no block taken out of the boat to put on this shackle and consequently the only way was to rove the end in because after they had it once rove they took the end in the boat and on to the "Celtic Chief."

Mr. OLSON.—Move to strike all the testimony as not responsive.

The COURT.—I think the motion should be granted and I so rule. Captain, Mr. Olson is entitled to a statement whether, as I say, what you said was based on observation or on actual knowledge. I understand that it was based on deduction.

A. I have stated that I did not see the shackle at the time because it was, the boat was between the "Celtic Chief" and the shackle and I couldn't possible see the shackle.

Q. So you don't know how it was attached to the shackle?

Mr. WARREN.—I object to that; let the witness finish his answer. [3197—2366]

Q. How many times was the rope used in the first purchase-tackle, that is, the main tackle of the Miller Salvage Company, how many times was it, did it go back and forth? A. How many sheeves?

Q. How many times did it go back and forth over the sheeves?

A. She was hove through two treble blocks; that makes six rounds.

Q. That means, does it not, that if there were a hundred feet between the two blocks, that it requires six hundred feet of rope to completely rig that

(Testimony of J. F. Haglund.)

tackle? That's right, isn't it?

A. Six hundred feet or over.

Q. Well, six hundred feet at least?

A. At least, yes.

Q. Now, then, if you move the end, the fall from that main tackle one foot, how far, we'll say move that a hundred feet, how far does that move the block? A. Sixth part of it.

Q. One-sixth of that? A. One-sixth.

Q. How many sheeves were there in each of the blocks of the second luff tackle?

A. The same way.

Q. And the same would be true?

A. Not if it was attached to the other tackle.

Q. That isn't the point. I say, if the block itself would move? A. The tackle by itself?

Q. Yes, the tackle were rigged as the main tackle?

A. Exactly.

Q. How many sheeves in the blocks of the third tackle? A. Four.

Q. Two in each, or four? A. Two in each.

Q. Now, then, if that were rigged as the main tackle, how far would that move upon moving the fall a hundred feet?

A. A fourth of that, or twenty-five feet. [3198—2367]

Q. Now, then, with tackles arranged in that way, how many feet of rope, how many feet of the fall of the second luff tackle, that is, the third tackle, would have to be taken in in order to move the block on the tackle one foot? A. The second luff.

Q. The first luff, the second tackle. The fall of

(Testimony of J. F. Haglund.)

the last luff tackle, how many feet of that would have to be taken in in order to move the first block one foot?

A. Six times six, and four times thirty-six would have to be taken in.

Q. One hundred and forty-four feet?

A. One hundred and forty-four feet in order to move the first block on the main purchase one foot.

Q. Now, do you know how much—no, I'll withdraw that. Do you know how much one pound exerted upon the first fall, the fall of the last luff tackle, would be multiplied, how much of that would be multiplied through these three tackles? Do you know that exactly, mathematically?

A. Not unless I figured it out.

Q. You don't know?

A. Not unless I got other figure for it; it all depends how the purchase is rigged.

Q. Do you know whether or not the strain that was exerted by the Miller purchase-tackles on the Miller line, whether that strain was taken by the wire hawser or by the ten-inch manilla hawser?

A. Taken by the ten-inch manilla hawser.

Q. How do you know that?

A. Because I say the straps around the manilla hawser where the block was attached.

Q. Do you know whether or not the wire lines got any strain at all? A. Not to my knowledge.

Q. Wasn't that wire line attached to the block?

A. No.

Q. It was not? A. No. [3199—2368]

Q. How was it attached to the other end?

(Testimony of J. F. Haglund.)

A. Through the shackle by a preventer line that they got, re-enforcement.

Q. You know, do you not, that that line must have been attached to the block?

A. Yes, but not the same points.

Q. That isn't the point I'm asking about. Again, I ask you to confine yourself to my question. Was it attached to the block?

A. So far as I know, so far as I observed, it was fast to the block. There may have been times when I didn't observe the tackle that it may have been readjusted, that I didn't observe, but more or less continually, night and day.

Q. When was it that you observed that the manilla hawser was taking the strain and not the wire?

A. Any time I looked at it.

Q. When was the last time you saw it?

A. I don't remember.

Q. Was it as late as half-past eleven? Wednesday, half-past eleven?

A. I didn't go and look at that.

Q. At any time Wednesday night?

A. I did not.

Mr. OLSON.—That's all the cross-examination. Oh, by the way: Have you found out yet the names of the men who were in the boat with you?

A. I can't find out whether they are still in the company. I don't know.

Q. Did you make any inquiry?

A. I have inquired.

Q. But you have been unable to find out?

A. Unable to find anybody.

Q. Was it a "Mikahala" boat or a "Helene" boat?

(Testimony of J. F. Haglund.)

A. I don't remember.

Q. You know the men that were with you?
[3200—2369] A. It was one of the two.

Q. You know the men that were employed on those two vessels? A. I do not.

Q. Is it impossible for you to find out from the Inter-Island Steam Navigation Company records?

A. Oh, no.

Q. Did you go to those records to see?

A. But I haven't found one of the men.

Q. Did you go to see who were the boatmen?

A. They are not in Honolulu at this time.

Q. I'm asking you if you went to the Inter-Island records to find out who were the boatmen on those two boats on that night?

A. I have inquired from the shipping master.

Q. Did you find out who the boatmen were?

A. I can't find that out, unless I find the men.

Q. You knew who were all of the boatmen of those two steamers?

A. There are some of the shoremen on the boats. They may have been all shoremen. I really don't know who the men were. There was a number of men out there; there was in the neighborhood of seventy-five and eighty stevedores.

Q. Who furnished the stevedores to the Inter-Island Steam Navigation Company?

A. We picked them up down the wharf.

Q. Wasn't it through McCabe, Hamilton, and Renny? A. No, sir.

Q. Who was the foreman in charge of the stevedores? A. The foreman was George Fern.

(Testimony of J. F. Haglund.)

Q. Didn't have any other man in charge of the stevedores? A. Not out there, I don't think.

Q. Not out there?

A. Captain Piltz, the mate of the "Mikahala," was aboard there looking out for certain things.
[3201—2370]

Q. Was he not acting as a boss or *luna* there over men now in the employ of the Inter-Island Steam Navigation Company?

A. Not to my knowledge, outside of George Fern; he is not in our employ any more.

Q. And what was George Fern doing?

A. He was foreman. He was the one that was shipping-master at the time and he came out and got the men, and he remained there until we got the vessel off the reef.

Mr. OLSON.—I think that's all.

Cross-examination on Behalf of MILLER SALVAGE CO.

Mr. WEAVER.—Q. Captain, if you imagine a line drawn along the keel of the "Celtic Chief" and extending astern till after it's passed beyond the anchor of the "Helene," how far away from that line was the port anchor of the "Helene"?

A. The port anchor was thirty fathom less chain than on the starboard anchor.

Q. That's not the question. I'm directing your attention to distance if you can give it. How far away from a line, I believe it is sometimes called dead astern, was that port anchor of the "Helene"?

A. The port anchor may have been a half a point, approximately.

(Testimony of J. F. Haglund.)

Q. That's giving it in points. How many degrees is a half a point, five and a quarter?

A. Five and a quarter? A half of it. Five and three-quarters, there is eleven and a half degrees to a point.

Q. And that anchor was how far away from the stern of the "Celtic Chief"?

A. Well, there's the length of the towline, the length of the ship and sixty fathom of chain; at that small angle I guess it would be approximately that sum added up, away from the "Celtic Chief."
[3202—2371]

Q. What do you make it?

A. I'm not very good at figuring in my head.

Q. What's the length of the towline?

A. Six hundred and thirty-five.

Q. And the length of the ship?

A. One hundred and seventy, three hundred and sixty feet of chain.

Q. That makes a total of eleven hundred and sixty-five feet? Does that sound right? It is the sum of six hundred and thirty-five, one hundred and seventy, and three hundred and sixty feet?

A. Six hundred and thirty-five, one hundred and seventy, and three hundred and sixty.

Q. You add the length of the chain to that, do you?

A. Yes.

Q. Can you say from observation, now, how far on the side of a straight line drawn through the keel of the "Celtic Chief" that anchor was laid?

A. Through the keel of the "Celtic Chief."

Q. On the first question, again. You gave it in degrees, can you give it in feet?

(Testimony of J. F. Haglund.)

A. Not unless I may do it on paper, I couldn't.

Q. How far away from the port anchor was the starboard anchor?

A. The angle between the two chains from the hawse-pipes, so near as I can remember and judge, would be a couple of points, I should judge, whatever distance that would make; but between the two anchors I couldn't determine unless I measured it.

Q. It's about twenty-one degrees?

A. Approximately that.

Q. And what was the depth of the water where your port anchor was laid?

A. About six fathoms, I should judge.

Q. And the starboard anchor?

A. Nearer seven; not even seven; maybe little less.

Q. What was the incline of the bottom of the ocean from where those anchors were laid up to the reef where the "Celtic [3203—2372] Chief" was aground? A. The incline of it?

Q. Yes.

A. Well, where the "Celtic Chief's" stern was, there was nineteen feet of water, but what angle—

Q. Do you know what the incline was?

A. I don't know it in degrees, no.

Q. In feet?

A. I couldn't say it, unless I measured it.

Q. Lay it out on a piece of paper, take a scale on it. Don't you have any idea of what the incline of the bottom was running aft of the "Celtic Chief" and on each side of her?

A. It would be very small.

Q. Very small what?

(Testimony of J. F. Haglund.)

A. Very small portion. I couldn't state to you how many inches to the foot or how many inches to the fathom even, unless I laid it out on a piece of paper and scaled it off.

Q. How near could you approximate the depth?

A. The distance to the starboard anchor, I think it is one hundred and thirty feet; now, the distance on the port, it would be approximately twenty-one foot.

Q. Do you know what the condition of the bottom of the sea was over the reef, going out seaward, on the port side of the "Celtic Chief," toward the west?

A. I couldn't state. I know nothing more than that because I didn't go over there to sound.

Q. Then you based your knowledge upon the knowledge of the position where the anchors of the "Helene" were laid and your knowledge—

A. And where the steamer "Helene" was lying, I know the depth there. That's how I based my knowledge. I got other means of determining it.

Q. Do you know anything about the depth of the water four hundred feet or five hundred feet away from the "Celtic [3204—2373] Chief," and four points on her port quarter?

A. Not positively, but I think it's a little shallower.

Q. What is that?

A. I think it was somewhat shallower.

Q. Why?

A. Because, being familiar with the locality around there, I know there is considerable shoals sticking out there.

Q. Wasn't that very close to the line between the "Celtic Chief" and the "Helene"? Wasn't this

(Testimony of J. F. Haglund.)

place indicated, I say, three or four points on the port side of the "Celtic Chief"—that's very close to the line between the "Celtic Chief" and the "Helene," was it not?

A. That's farther to the westward.

Q. How much?

A. Well, must have been all of three points.

Q. It would be three points? A. About that.

Q. How much would that be in distance?

A. I couldn't tell you.

Q. Couldn't you tell from your knowledge?

A. It might have been several hundred feet.

Q. Do you know that it would be as much as two hundred feet?

A. Yes, it would be more to the westward of a line drawn between the "Helene" and the "Celtic Chief." It would be more than two hundred, possibly be more than five hundred feet.

Q. You base your statement that there's a shoal there upon the assumption that the distance is about five hundred feet to the westward of a line between the "Helene" and the "Celtic Chief"?

A. I cannot positively state so, but I think that the shoals there is a little to the westward of the "Celtic Chief," so near as I can remember, observing so often as I have. [3205—2374]

Q. What reasons have you, if any, for saying that the Miller anchor, if laid four or five hundred feet on the port quarter of the "Celtic Chief" and about four points on the port quarter, was not a good position for that anchor?

A. Because there was too much of an angle.

Q. Why?

(Testimony of J. F. Haglund.)

A. Four or five points on a ship's quarter, that's considerably too much of an angle for it to have any aid in pulling the ship off sternward.

Q. Well, would not a slight angle tend to pull the ship loose in its channel and then allow it to slide off, twist it slightly and then make room for her to slide off in her bed?

A. Not with the same effect as it would if that angle wasn't in existence.

Q. Supposing a man have an anchor there, four points to the port side, and operate strain upon it, might it not be good seamanship and cause a slight difference in the position of the "Celtic Chief"?

A. I don't think so.

Q. You think dead astern is the best position?

A. The same way as the ship goes off the reef, as a rule, is the wise way to get her off.

Q. If an anchor were put out four hundred or five hundred feet on the port side of the "Celtic Chief" and four points on that side, would there be any danger at all to the ship from the anchor?

A. If it was put a severe strain on it, you mean?

Q. Yes; would there be any danger to the ship from the anchor being laid in that position?

A. It may have been, yes.

Q. How?

A. It may have strained the vessel. Trying to slide her broadside like that instead of coming from the stern, might have strained her keel; might do different kind of damage to her bottom in that way.

Q. You have stated, I believe, that the lines of the Miller [3206—2375] Salvage Company to the

(Testimony of J. F. Haglund.)

anchor were not as taut as possible. Now, what test did you make to determine whether or not they were taut?

A. I did not make any test, only that I observe the wire where it come out of the water.

Q. You were on the poop deck, were you not?

A. No, I was in the boat going by it.

Q. Were you not on the poop deck after eleven o'clock on Wednesday night? A. Yes.

Q. Did you not have an opportunity there of seeing those lines?

A. I did look at them lines once or twice, and as near as I can remember, I don't know as I saw it much tauter. May have been little—I wouldn't say that it wasn't; at the same time, to my best judgment, it wasn't so taut as it could have been.

Q. Didn't those lines go across the poop deck?

A. Along the poop deck.

Q. The length of it, fore and aft? A. Yes.

Q. Didn't you have to step over the lines?

A. They were lying right on the deck.

Q. Then you had an opportunity to test them by stepping on them?

A. No possible means of doing that.

Q. You couldn't step on it?

A. I could have stepped on it, but I wouldn't be any wiser than before I stepped on it.

Q. Then there was no distance between the line coming over the poop and the deck by which you could test the strain? A. No, not on the poop.

Q. On the main deck, you say the line came over the deck aft? A. Yes.

(Testimony of J. F. Haglund.)

Q. Isn't that a few inches above the deck?

A. Yes.

Q. Couldn't you step on it there? Isn't that a good way to test the strain?

A. No, that's only an old seaman's [3207—2376] yarn.

Q. You couldn't tell?

A. You couldn't tell by stepping how much strain was on it, and I didn't step on it.

Q. Now, if Captain Macaulay says a man may test a line by stepping on it, he is working on an old seaman's yarn?

A. You may be able to say whether it is slack or somewhere near slack, but to determine the strain actually put on it—

Q. It is a fact, is it not, he could determine whether or not there was more or less strain upon the line?

A. Yes, certainly, but how much strain—

Q. It is a test of whether a line is taut or not?

A. It is test of a kind in a way.

Q. And you didn't use that test? A. I did not.

Q. Did you observe at any time when you were on the poop deck that night after eleven o'clock where the shackle on the Miller Salvage Company's line was? A. I did not observe.

Q. Did you ever see it on deck?

A. Not to my knowledge.

Q. Did you ever see it forward of the poop deck from the main deck?

A. Not that I know of. If I remember correctly, when he was unshackling the wire from the hawser there was some of Miller's line up on the poop and

(Testimony of J. F. Haglund.)

judging from that I suppose that's where the shackle were, but I didn't see the shackle.

Q. You saw some man working on a shackle?

A. I couldn't say, but I presume that was what they were doing.

Q. When did you see this?

A. Just as the ship was floated.

Q. Do you know whether it was a hawser or a cable that came aboard the poop deck while you were on the poop deck after [3208—2377] eleven o'clock Wednesday night?

A. I don't remember as I went and looked at that particularly and how it was that the wire got in-board or not; that I'm not prepared to state.

Q. You can't say, then,—you are not prepared to state that it was not a steel wire that came across the poop?

A. Whether the wire was outside the deck or inside, that I couldn't state.

Q. You are not prepared to state, then, that it was a steel cable that crossed the poop at some time while you were there?

A. I am not prepared to state so.

Q. After eleven o'clock, Captain, were you at any time in the cabin below with either Miller or Captain Henry or Pilot Macaulay?

A. Not that I can remember.

Q. You heard this conversation or testimony of Miller, did you not? Were you down in the cabin down below taking refreshments? A. I was not.

Q. Are you positive of that fact? A. I am.

Q. You were on deck all the time?

(Testimony of J. F. Haglund.)

A. No, part of the time I was aboard the other steamers and the "Arcona."

Q. I speak of after eleven o'clock.

A. After eleven o'clock I was on the main deck part of it, and on the poop also, but I didn't go down below.

Q. Did you present these people with these sandwiches?

A. That was the early part of the evening.

Q. Were you in the cabin eating sandwiches at any time? A. I was not.

Q. Was there an occasion on which you presented sandwiches?

A. I had some sandwiches sent from the "Mikahala," but I didn't take them aboard.

Q. Do you know when they got aboard? [3209—2378]

A. I do not.

Q. Were they there when you were there?

A. I don't know. I was aboard the "Mikahala" when they were sent.

Q. Then you did not take refreshments with any of these others?

A. I did not at that particular time or at any time when I was down the cabin.

Q. Where were you most of the time, where on the poop, that night? What part of the poop?

A. So near as I can remember I was over on the port side. I don't mean to say all the time, but I might have gone on the starboard side also. I don't remember exactly, but my particular business was mostly on the "Celtic Chief's" port side. That's

(Testimony of J. F. Haglund.)

the side we was working the cargo to the last and that's where I had the "Helene's" and the "Like-like's" lines fast and which I was more anxious about, more so than the "Mikahala's" and that's what kept me more on the port side of the "Celtic Chief" than on the starboard side of her.

Q. And you were near the mizzenmast, were you not? A. Beg your pardon?

Q. Were you near the mizzenmast?

A. Oh, yes.

Q. While there were you sitting down or standing up?

A. I don't think I was sitting down at any part of the ship or at any time from between eleven o'clock until after the ship was towed off the reef.

Q. And how far from the break of the poop were you on the port side?

A. I was not in any particular station.

Q. What was the extent of your operations there on the deck?

A. Half the length of the ship from midships, from the main hatch. I got the men called out there after we stopped discharging and went up on the poop. It would be about [3210—2379] half the length of the ship.

Q. In the course of moving about on the poop, how far away from the break of the poop would you go tending to your duties?

A. So far as the main hatch.

Q. No, on the poop, while on the poop how far away from the break of the poop would you go in tending to your duties?

(Testimony of J. F. Haglund.)

A. So far as the stern of the ship.

Q. Did you go as far as the stern of the ship?

A. I did.

Q. How many times did you go as far as that?

A. I couldn't say that.

Q. How far away from the break of the poop was your usual position while there?

A. I didn't have no usual position. I was in any part of the poop.

Q. Weren't you near the mizzenmast more than any other place?

A. I may have been so, because that's where the "Helene's" lines were kept and that was nearer the mizzenmast than to the stern and I may have spent more time around there.

Q. And from that position, could you see the Miller Salvage Company line over the stern?

A. No, I could not, not from that position.

Q. When you were down on the main deck which side of the vessel were you on?

A. Mostly on the port side after that time of evening, after eleven o'clock.

Q. And the Miller tackles were on the starboard side? A. Yes.

Q. From that side could you see the Miller Salvage Company's line over the stern?

A. Oh, no, certainly not.

Q. Did you observe how the Miller Salvage Company's tackles were rigged to the starboard line of the "Arcona" coming in from amidship on deck, the main deck?

A. Well, "Arcona's" wire came in through the

(Testimony of J. F. Haglund.)

midship chock on [3211—2380] the “Celtic Chief,” run across the deck and fastened to her mainmast.

Q. Now, the Miller Salvage Company’s tackles were across this?

A. The tackle was over the wire.

Q. The tackle was over the wire? A. Yes.

Q. How high was that wire from the deck?

A. Maybe a foot, maybe two. I don’t remember exactly how high that hawse-pipe was above the bars of the ship.

Q. Are you prepared to swear that the tackles were over the wire and not under this wire?

A. Yes.

Q. And do you know whether or not they touched the wire, the tackles?

A. Any time I looked at them they were lying on the wire, touching the wire at all times.

Q. Touching the wire at all times?

A. At all times that I saw them.

Q. Where—do you remember when the second red light on the “Celtic Chief” was sent up in the mizzenmast?

A. Well, so near as I can remember it was done before I came aboard the ship. I didn’t see it go up, but I know it was there approximately at eleven o’clock. It may have been put up just few seconds or few minutes before that; it may have been a long period of time.

Q. Then that second red light was not run up after it was off, after the “Celtic Chief” was coming off? Are you prepared to swear to that?

A. Oh, that was all there, I know, before eleven

(Testimony of J. F. Haglund.)

o'clock or before I came aboard the ship.

Q. Did you see any of the signals given for the "Arcona," these fire signals? A. I did.

Q. Did you see the green light signals? A. Yes.

Q. When did they go off with regard to the "Celtic Chief" coming [3212—2381] off?

A. When the "Celtic Chief" commenced moving the first time there was no signals fired. That's the first time we noticed her moving previous to twelve o'clock, but how long after twelve o'clock, I'm not prepared to state.

Q. Was the coming off of the "Celtic Chief" and the shooting off of these signals simultaneous?

Mr. OLSON.—Object to the question on the ground it is not proper cross-examination by the Miller Salvage Company.

Mr. WEAVER.—I withdraw the question.

Q. When the "Celtic Chief" was moving off the reef what were the causes, the various causes, leading to her coming off in the direction she did? Give your idea or opinion in the matter and, as near as you can, what causes led her to come off in the direction she did, giving particular attention to direction and not to speed or anything else?

A. Because the strain, effective strain on that pull would practically be right astern.

Q. That is, it would be a compromise or result between the force of the "Helene" and the "Likelike" and the "Mikahala" balancing each other?

A. Yes.

Q. And the Miller Salvage Company's line?

A. Whatever amount that was, yes. I acknowl-

(Testimony of J. F. Haglund.)

edge there was a certain amount of strain on the Miller's line.

Q. Now, then, Captain, if the Miller Salvage Company's line had ceased to exert any force immediately after the ship was floated, would the direction of the ship be the same in your opinion?

A. Until some of the lines were cut it would be the same.

Q. And then when the lines were cut what effective force was there after that cutting to give direction the ship's course?

A. After the "Mikahala," or after the "Like-like's" and the "Helene's" lines were cut, the "Mikahala" was the only vessel exerting any [3213—2382] power on the "Celtic Chief" sheer-ing her inshore or to the windward so much as she could with her power.

Q. With the strain on the Miller Salvage Company's line that you observed, was it possible that that strain would cause the "Celtic Chief" to come off the reef in the direction of the "Arcona" and from that strain alone obtain sufficient momentum to approach the "Arcona" as nearly as you observed her, forty or fifty feet?

A. Certainly it did not. In my opinion it had very little to do with it because the strain wasn't sufficient.

Q. Did you—before the "Celtic Chief" came off, did you observe any trouble with the shackle of the Miller Salvage Company line getting into the chock on the stern of the "Celtic Chief"?

A. I did not observe that trouble. It may have been there, but I did not observe it.

(Testimony of J. F. Haglund.)

Q. Did you see Captain Macauley around the chock with Miller just before the "Celtic Chief" came off?

A. I saw Captain Macauley on the poop. I don't know where Captain Miller was at the time.

Q. Can you say whether or not Captain Miller and Captain Macauley were working together over something at the chock at the stern of the "Celtic Chief" where the Miller line came through?

A. I couldn't say.

Q. After eleven o'clock on Wednesday night, how could the Miller people use the same winch when you were using it in unloading cargo?

A. We had stopped working on the starboard side at that time. We was only working on the port quarter, after hatch.

Q. Were you not using two of these gypsy-heads up to eleven-thirty, using them both? A. No.

Q. When did you stop using one?

A. About eleven o'clock. When I come aboard I went forward to stop the work on the main hatch and got the scow ready to [3214—2383] let go from the "Celtic Chief" and get the men up on deck.

Q. You've stated that in your opinion the Miller Salvage Company anchor did not exert more force or effect force on the "Celtic Chief" to pull her off the reef as the steamers of the Inter-Island individually. How do you compare that with the work of the "Likelike," for instance?

A. She had a very heavy strain on her line.

Q. "Likelike" had a strain on her line?

A. Very severe strain on her line.

(Testimony of J. F. Haglund.)

Q. She did?

A. Yes, sir, just about as much strain as could be put on it without breaking it.

Q. Then you base your opinion in regard to the "Likelike" merely on the fact that you think she had as big a strain as she could stand?

A. A bigger strain on her than they exerted on the Miller Salvage Company's line.

Q. How do you determine that this line had as big a strain as it could stand?

A. By looking at the winch in the manner it took in the slack of that tackle.

Q. I'm asking on the "Likelike's" line, how did you determine that that was as big a strain as it could stand. How, by what means do you determine that?

A. I looked at it both inside the chock and over the chock to the boats.

Q. On the "Celtic Chief"?

A. On the "Celtic Chief," yes.

Q. You looked at it. Can you tell by merely looking at the line that it had as big a strain as it could stand?

A. Oh, no; the direction it led out in a nearly straight line between the steamer.

Q. Don't you have to know, in order to determine that, the pulling power exerted by the steamer, indicated horse-power of the engine, the pitch of the propeller, its diameter and the revolutions, indicated effective horse-power in pulling, and then by reference to books determine the particular [3215—2384] breaking strain of your hawser? That's the

(Testimony of J. F. Haglund.)

only way you can determine that?

A. Not necessarily. You can determine it by experience. You know through experience whether a line have a severe strain or just merely being taut by looking at the line, just by looking at it without any tests.

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Q. The "Likelike" was pulling on the "Celtic Chief" there after eleven o'clock at the same time as the "Helene." Now, the relative power of those two agencies was the same, was it?

A. Both pulling.

Q. The relative power was about the same, I suppose. That was the "Likelike" and the "Helene"?

A. Oh, the "*Likelike*" is a more powerful boat than the "Likelike."

Q. Which was?

A. The "Helene" is a little more powerful boat.

Q. That isn't the question. The pulling power exerted by the two is about the same, isn't it?

A. No.

Q. One greater than the other? A. Yes, sir.

Q. Which was greater? A. The "Helene."

Q. Now, then, the "Helene" was exerting a greater pulling power by what reason?

A. She had more horse-power for one thing, heavier ship, had two anchors laid out ahead of the "Likelike."

Q. What kind of hawsers had the "Helene"?

A. Twelve-inch hawsers, manilla hawsers.

Q. And the "Likelike"? A. Eight-inch.

Q. One eight-inch hawser?

(Testimony of J. F. Haglund.)

A. One eight-inch hawser.

Q. And the "Helene" had how many hawsers, one or two? A. One twelve-inch. [3216—2385]

Q. Then the difference was due to a greater pulling power or engine power of the "Helene" as well as she had anchors out forward?

A. And using her winches.

Q. Was the "Mikahala" greater than the "Helene" in her pulling power in your opinion?

A. No.

Q. Then the "Helene" was greater than either the "Likelike" or "Mikahala"? A. Yes, sir.

Q. What line had the "Mikahala"?

A. She had two eight-inch hawsers, manilla hawsers.

Q. And she was pulling with her anchors only?

A. She had an anchor-chain out ahead.

Q. Was she doing any pulling by means of her anchor?

A. She got her chain taut so far as I know.

Mr. OLSON.—I object to that last statement of the witness on the ground it is obviously hearsay.

Mr. WARREN.—I'm not objecting to that going out.

The COURT.—Very well, that's stricken.

Q. Then, in your opinion, the "Helene" was exerting more influence, more pull, than either the "Mikahala" or the "Likelike," was she? A. Yes.

Q. Now, wasn't that because she had anchors out and was pulling in on her anchors, exerting a pull on her anchors and thereby transporting the strain to her stern line? A. Yes.

(Testimony of J. F. Haglund.)

Q. Not only because of the greater horse-power but because of her pulling in on her anchor-chains?

A. Yes, that's what I stated.

Q. Well, then, you believe that the pulling power, holding power of an anchor depends upon the angle which the chain or cable to the anchor as to the bottom; the holding power depends on it?

A. I said the chain formed no angle to the bottom.

Q. You contend, I understand, that the "Helene" had a stronger [3217—2386] holding power because her anchor was out further from the "Celtic Chief" than the Miller anchor, and, therefore, the line that ran from the "Celtic Chief" to the "Helene" had a less angle? A. It certainly did.

Q. That's the reason?

A. It had more holding power, yes.

Q. Because the angle of the cable or line to the "Helene" anchor was less, isn't that the real reason?

A. Supposing there was a straight line drawn from the "Celtic Chief" to the "Helene's" anchor, the angle would be smaller.

Q. And that's the reason the holding power was greater? A. Yes, that's one of the reasons.

Q. Hasn't the size of the anchor a great deal to do with the holding power?

A. Yes, if they lay in the same place.

Q. It's the same kind of bottom? If there be the same kind of bottom and one anchor be a one-ton anchor and another a five-ton anchor under the same angle of pull, which would hold the most?

A. It all depends what cables there are on her. If they had a similar chain, similar weight on to the chain, similar distance, under similar conditions of

(Testimony of J. F. Haglund.)

bottom, then the greater weight would have the best hold, but under those conditions at the "Celtic Chief," the "Helene" anchor was twice as far from the "Celtic Chief" than the Miller anchor; "Helene" had a greater weight out.

Q. How was that?

A. She had ninety fathom on one and sixty fathom on the other.

Q. Doesn't the holding power depend a great deal on the amount of resistance on account of the size of the flukes? A. They have to a certain extent.

Q. A one-ton anchor—

A. All depends on the condition of the bottom.

Q. If the condition of the bottom be the same, then the size [3218—2387] of the flukes of the anchor would have considerable to do with the holding power of that anchor?

A. If the flukes would hold on the bottom.

Q. And the shank of an anchor, relative size of a shank of an anchor gives the power of an anchor to hold before it breaks doesn't it?

A. The strength of the flukes lies on the shank.

Q. But the fluke will hold a sort of a grab on the side?

A. The fluke, the bend in the anchor have really the hold.

Q. The fluke is a sort of, just like a plow?

A. Same principle.

Q. Therefore, a big surface would hold more than a smaller surface, wouldn't it? A. Yes.

Q. Now, then, I believe your explanation of the holding power was that if a chain be nearly up and

(Testimony of J. F. Haglund.)

down naturally the flukes wouldn't get any grab in the bottom and no hold? A. No.

Q. Whereas a longer chain out would enable these flukes to get a grab and the more horizontal you made your chain the better the flukes will grab?

A. That's correct.

Q. And on that is why you say when the chain is up and down it has no hold?

A. It has no hold, no.

Q. Now, if the "Celtic Chief" were inclined to move in on Wednesday before eleven o'clock on account of the swell, was it safe to lighten cargo, well, we'll say before five o'clock of Wednesday, was it safe to lighten cargo if the "Celtic Chief" was inclined to move in with the swell?

Mr. OLSON.—Object to the question on the ground it is not proper cross-examination, if the Court please.

Mr. WARREN.—Same objection.

Mr. OLSON.—I'll withdraw my objection.

Mr. WEAVER.—I'll withdraw the question and reframe it. On Wednesday up to five o'clock, the Inter-Island Company [3219—2388] was lighter-cargo, were they not? A. Wednesday?

Q. Yes. A. Yes, sir.

Q. Well, if the "Celtic Chief" were moving in toward the reef by reason of the swells coming from the stern, was it safe seamanship to lighten her under those conditions?

Mr. WARREN.—I object to the question.

Mr. WEAVER.—Between sunrise and five o'clock?

(Testimony of J. F. Haglund.)

Mr. WARREN.—I object to the question as involving an improper assumption.

The COURT.—I allow the question.

A. She wasn't moving in.

Mr. OLSON.—Move to strike on the ground it is not responsive.

The COURT.—Motion is granted.

Mr. WEAVER.—I want that question answered as it was given.

A. If there had been a tendency of the "Celtic Chief" moving in at that time we would have put more anchors out. We had plenty anchors and chain.

Mr. OLSON.—Move to strike on the ground it is not responsive.

The COURT.—I will grant the motion.

Mr. WARREN.—I object to its going out, your Honor.

(Question read.)

A. Not under those conditions, certainly not.

Q. Can you say whether or not the Miller line running over the poop that night that you saw, about eleven o'clock, was a wire hawser or a manilla hawser? A. Manilla hawser.

Q. You know that it was? A. Yes.

Q. And did you notice how big it was?

A. To my best judgment about ten inches circumference.

Q. Didn't you testify on direct examination that you did not notice the manilla hawser of the Miller Salvage Company [3220—2389] coming over the poop?

(Testimony of J. F. Haglund.)

A. Not that I can remember testifying to anything like that.

Q. You don't remember? A. No.

Q. You don't remember having so testified?

A. No, I do not.

Q. The fact then is that you know it was a manilla hawser? A. Manilla hawser.

Mr. WEAVER.—That's all the cross-examination.

Recross-examination by Mr. OLSON.

Q. You say that the size of the "Mikahala's" line was eight inches in circumference? A. Yes.

Q. It was an ordinary manilla hawser, wasn't it?

A. Ordinary manilla hawser.

Q. Do you know the breaking strain of an eight-inch manilla hawser?

A. Approximately twenty-five tons.

Q. That is to say, that if that rope were rigged straight up and down and a twenty-five ton object attached to the lower end of it that it would require that amount of weight to break the line?

A. That's what it is supposed to be.

Q. And in order for a steamer towing by means of such a line to break the line, it would have to exert a strain upon that line which would be equal to twenty-five tons; isn't that so? A. Yes, sir.

Q. So, then, you think that the "Likelike" was exerting a twenty-five ton strain upon that line while she was pulling there?

A. She could have broke that hawser.

Q. Well, was she exerting as much as twenty tons?

A. She might at times.

Q. Do you think she did?

(Testimony of J. F. Haglund.)

A. Well, it's kind of hard to say exactly, but there was times I should judge between the swells that she might have exerted that amount.

Q. Where was her anchor laid?

A. Aft, about two points on the port quarter of the "Celtic Chief," astern; laid ahead of [3221—2390] the "Likelike."

Q. What direction was the anchor laid from the "Helene" itself? A. Right ahead.

Q. What? A. Right ahead.

Q. Directly ahead?

A. About south by west by compass, from the "Celtic Chief."

Q. Well, with reference to the "Likelike," are you prepared to say that the anchor was not laid at all on her port quarter?

A. On her port bow, you mean?

Q. Port bow?

A. No, they run a line from the "Likelike's" bow over the "Helene" and hove her up to avoid the current.

Q. I don't understand that.

A. They run a bowline from the "Likelike" up to the "Helene's" starboard side and hove the "Likelike" up closer to the "Helene" which was more powerful, and after that hauled the "Likelike" up to the eastward in line with her anchor. In fact she was a little to windward of her anchor.

Q. Who is the captain of the "Likelike" or was at that time?

A. An Hawaiian by the name of Napala.

Q. Has there been any officer of the "Likelike"?

(Testimony of J. F. Haglund.)

testifying in this case so far? A. Two engineers.

Q. Aside from the engineers?

A. No, I don't think so.

Q. You stated a little while ago, I believe, that the "Likelike," the difference between the "Helene" and the "Likelike" was in this, that the "Helene" was using, was not only a more powerful boat, but was using her anchors for pulling on the "Celtic Chief." That was the difference between the "Likelike" and the "Helene." Then, as far as you know, the "Likelike" was pulling by means of her propeller only?

A. And she had her chain hove taut; so taut as they could get it.

Q. Where were you when you say that they were taut? [3222—2391]

A. I was on the "Likelike."

Q. And you observed that she was using her anchor for the purpose of heaving?

A. The anchor chain was so taut as they possibly could get it.

Q. Did you observe that?

A. I saw it hove taut. I can tell a chain, Mr. Olson, when it is taut and when it is not taut.

Q. Did you actually see the winches in use?

A. I didn't see it in use but I heard it used, heaving the winch chain. I heard the winches turning around and I saw the chain taut.

Q. So, excepting for the fact that you did see the chain and position that it had, you don't know, then, whether or not the "Likelike" was actually using her anchor for the purpose of pulling on the "Celtic Chief"? A. Of course, I do.

(Testimony of J. F. Haglund.)

Q. Didn't you just state that the reason why you say she was using her anchor was because you saw the chain?

A. I saw the chain taut, consequently they must be using it for that purpose.

Q. Isn't that the reason why you say that the "Likelike" was using her anchor for the purpose of hauling, because you saw the anchor chain and its position? A. Yes.

Q. That is the reason, isn't it?

A. That is the reason.

Q. Do you know what amount of strain the "Like-like," by means of her propeller, was capable of exerting at that time, effective power?

A. Out there?

Q. Yes.

A. It all depends on the motion of the ship along with her horse-power used on the [3223—2392] engine and also what power she exerted on the anchor-chain. I couldn't say how much that would amount to exactly in tons.

Q. You don't know? A. No, not exactly, no.

Q. Why did you say that you think that at times the "Likelike" was exerting as much as twenty tons strain upon her line?

A. Because I saw that hawser just about as taut as it could be or nearly so without moving. I saw that a good many times during Wednesday afternoon, Wednesday evening, and also during the early part of Wednesday afternoon.

Q. And you were able, by looking at the hawser and seeing it, to determine that there was about a twenty tons of strain on it? A. Yes, I think so.

(Testimony of J. F. Haglund.)

Q. What is the horse-power of the "Likelike"?

A. Her indicated horse-power is about three hundred and eighty, if I remember right.

Q. It's about three hundred and seventy, isn't it?

A. Between seventy and eighty.

Q. Do you know the pitch of her wheel?

A. I do not.

Q. Do you know the maximum revolutions of the "Likelike's" engine? A. I do not.

Q. Now, how many tons in your opinion, is the "Likelike" capable of exerting pulling upon an object that is fixed, pulling by means of her propeller, at the maximum?

A. Under the conditions that prevailed out at the "Celtic Chief"?

Q. Suppose she is pulling in smooth water with a line attached to a fixed object, how many tons of strain is she able to transfer?

A. She couldn't exert very much power towing in smooth water. I can't state exactly; in the neighborhood of three tons. [3224—2393]

Q. What is the difference between towing in smooth water and water such as that that prevailed about the "Celtic Chief"?

A. A great deal of difference.

Q. Well, what is the difference.

A. The momentum of the ship, the whole weight of the ship in the seaway will add its weight to the towing hawser.

Q. You know, do you not, that the "Likelike" was stationary before the "Celtic Chief" began to come off? A. Moving up and down in the seaway.

Q. Except for the fact of this up and downward

(Testimony of J. F. Haglund.)

motion she was practically stationary?

A. Practically stationary outside of the up and down motion.

Q. What was there that would add to her power, pull, in the condition of the sea that prevailed about the "Celtic Chief"?

A. The way that ship moved up in the bight that existed between the "Celtic Chief" and her anchor.

Q. You mean the rise and fall?

A. Rise and fall.

Q. Of the ship itself? A. Ship itself.

Q. How much do you think that would add?

A. It all depends on the amount of rise and fall.

Q. Do you think it would be as much as fifteen or sixteen?

A. I think more than that in some of the big swells.

Q. You think so?

A. I do. I could tell it on the line.

Q. Now, when was this that this occurred? When was it that there was this strain being exerted by the "Likelike"?

A. During all the time she was going full speed ahead.

Q. Was that true on Wednesday before dark?

A. There was a couple of times we had to stop her engines.

Q. Except for the times when she had her engines stopped? [3225—2394] A. Yes.

Q. And after eleven o'clock you observed the "Likelike's" line also closely? A. Yes.

Q. Did you observe, at any time after eleven

(Testimony of J. F. Haglund.)

o'clock, that the "Likelike" was exerting as much strain as that upon her line? A. Yes, I did.

Q. Somewhere in the neighborhood of twenty tons?

A. In my best judgment about that.

Q. How long was that before the "Celtic Chief" came off? A. All the time.

Q. All the time?

A. Every time I saw the line.

Q. Did it fall? Was there a certain time while the swell was raising her or letting her fall that this strain would be the greatest? It wasn't constant twenty tons?

A. At the time she raised up it would be greater strain.

Q. Do you mean to say she had twenty tons practically all the time and it would be greater?

A. Greater as the ship was lifted.

Q. How much greater?

A. That's impossible for me to say.

Q. Well, the least amount greater?

A. I couldn't state any definite amount.

Q. Would it be as much as ten tons or more?

A. I stated up to about twenty tons strain on her, so near as I could judge.

Q. Do you mean twenty tons was the greatest at any time?

A. I think so because the line didn't break. There may have been a few tons over.

Q. It was while she was rising on these swells that there would be as much as twenty tons?

A. Had a greater strain.

Q. And you observed that every few moments up

(Testimony of J. F. Haglund.)

to the time [3226—2395] that the ship actually came off?

A. At a few seconds before the line was cut.

Q. How long had the "Likelike" been pulling out there?

A. She pulled over, I should judge, about approximately twelve hours.

Q. Twelve hours constantly?

A. Approximately that.

Q. Now, then, referring to the "Helene," how much strain do you judge that the "Helene" was transferring by her line, in tons, say during the half hour or so preceding the coming off of the "Celtic Chief"? A. I couldn't tell exactly.

Q. How much?

A. I couldn't tell you that exactly.

Q. You know that she was exerting a greater strain than the "Likelike"?

A. Certainly, a greater strain because she had a better hold for it, little more horse-power, and heavier ship; besides, she had approximately a hundred ton of saltpeter in her and the weight of her was a great deal larger than the "Likelike"; consequently the strain was a great deal more than the "Likelike's."

Q. How much would you judge the difference was? Would it be as much as twice as much more, do you think? A. At times I think so.

Q. You think it sometimes ran as high as forty tons? A. I think so.

Q. Would it run higher than that with the swells?

A. Might have been.

(Testimony of J. F. Haglund.)

Q. In your judgment might have been forty-five or fifty? A. Hardly as high as fifty.

Q. Somewhere between forty and fifty at the maximum? A. At the maximum, I should judge.

Q. Was she exerting less than that just before the "Celtic [3227—2396] Chief" came off or was that up to the time the "Celtic Chief" came off?

A. Up to the time that her line was cut.

Q. And these swells would come every few minutes? A. Yes.

Q. What is the breaking strain of a twelve-inch manilla hawser?

A. Fifty-six tons and a fraction.

Q. Now, you testified that the line of the "Mauna Kea," after the operations, according to your judgment and from the examination that you gave it, had deteriorated to what extent? I am now referring to the line of the—

Mr. WARREN.—I object to this as improper cross-examination on Mr. Weaver's examination, your Honor.

Mr. OLSON.—Then I ask the Court's permission to go into the matter.

The COURT.—I allow it.

Mr. WARREN.—And then have a recross again after I have direct?

Mr. OLSON.—At this time, this is part of my cross-examination.

Q. Now, the line to which I refer, is that of which there is a sample in evidence in this case as Libellant's Exhibit "O," what was the amount of deterioration that you testified to?

(Testimony of J. F. Haglund.)

A. I have testified that it was practically useless to the Inter-Island.

Q. You said, did you not, that its tensile strength had been reduced a certain amount? Let's find out what you testified about that. What did you say about that?

A. I don't remember how much I said.

Q. Now, then, you haven't forgotten what your judgment was on that point? What, in your judgment, was its tensile strength after the "Celtic Chief" operations, immediately [3228—2397] after the "Celtic Chief" operations, as compared with what it was at the start?

A. In my best judgment, I should think that line would probably—maybe the tensile strain of it may be so high as fifty to seventy-five per cent so far as the breaking strain.

Q. Is that your judgment? A. I think so.

Q. You think that that's at least half as strong as it was when it was new and possibly three-fourths as strong?

A. As far as the strength of it; maybe little less, maybe little more. I can't tell.

Q. You testified on direct, did you not, that the "Mauna Kea's" line was the one that had stood the most strain of any of the lines that were used by the Inter-Island vessels in the "Celtic Chief" operations?

A. The "Mauna Kea" and the starboard line of the "Mikahala" was the two worst ones.

Q. What was that answer?

A. The "Mauna Kea" and the starboard line of the

(Testimony of J. F. Haglund.)

"Mikahala" was the two worst ones.

Q. Which was the worse of those two?

A. Practically the same.

Q. And fifty-six tons was the breaking strain of a twelve-inch manilla hawser such as was used afterwards by the "Helene"? A. That's correct.

Q. Then, one-half of fifty-six would be twenty-eight tons, wouldn't it? A. Yes.

Q. And therefore, Captain Haglund, doesn't it follow that if that line had deteriorated to the extent of one-half of its tensile strength through its use at the "Celtic Chief" operations, that a strain of twenty-eight tons or more, exerted at any time just previous to the "Celtic Chief's" floating, would have broken that line? I mean a strain similar to that expended by the "Helene"?

A. If the tensile strain was only twenty-eight tons.
[3229—2398]

Q. But you testified very positively that the tensile strain of that line had been reduced to less than one-half of its original tensile strength.

A. If I testified to that I may have been mistaken because no man can tell the tensile strength of that piece of rope lying there unless you test it.

Q. You have testified, have you not, Captain Haglund, that, in your judgment, the "Helene," just previous to the floating of the "Celtic Chief," was exerting as much as forty or fifty tons with this line, of which a sample is in evidence, marked Libellant's Exhibit "O." A. To my best judgment.

Q. Then, as a matter of fact, your judgment is that that line had a tensile strength of forty tons immediately after the "Celtic Chief" operations?

(Testimony of J. F. Haglund.)

A. It might and it might be less. I don't say positively.

Q. If, in your judgment, the "Helene" was exerting as much as forty tons or more upon that line just prior to the floating of the "Celtic Chief," then isn't it true, Captain, that, in your judgment, that line had a tensile strength of forty tons or more?

A. If that is the case.

Q. And that is your judgment?

A. So near as I can.

Q. Now, then, kindly examine Libellant's Exhibit "O" in the way that you said you examined it after the "Celtic Chief" operations? A. You see how—

Q. Don't say anything about it, just examine it. First, examine the whole thing. Examine it as carefully as if you were going over it again?

A. I can't testify to the tensile strength. I don't remember anything about that.

Q. Have you opened up the yarn, the various strands, to see [3230—2399] what they look like inside?

A. The looks of it wouldn't tell me what the tensile strength is.

Q. You can't judge of the tensile strength by looking at it? A. I can't tell.

Q. Have you examined that as carefully as you could do in order to judge to the best of your ability of the tensile strength of it?

A. I couldn't tell the tensile strength.

Q. Have you examined to the best of your ability for the purpose of determining, as well as you can, how strong that rope is as compared to what it was

(Testimony of J. F. Haglund.)

when it was new? Are you incapable of forming any judgment?

A. I have stated so far as I could; maybe fifty per cent, maybe less, maybe more.

Q. I want you to examine it.

A. I've examined it, not once—

Q. I want you to examine it now. I want you to examine it just exactly as you would do if you wished to satisfy yourself, to the best of your ability, for the purpose of judging what its strength is.

A. I couldn't tell you that, Mr. Olson and Judge, unless I know positively what strain had been put on it. I know at one time there was a breaking strain put on that line because the steamer "Mauna Kea" broke it twice, and, judging from that alone, I know the deterioration. Maybe now that line got a weak spot in it.

Q. I want you to examine that in the best way that you can here, for the purpose of judging to the best of your ability from such examination what its strength is.

A. I have stated, Mr. Olson, it is impossible for any sailorman [3231—2400] or anybody else to judge the tensile strength of this rope. You may open up every strand and then you are not able to testify further than I have already done.

Q. Didn't you testify on direct that the day after the "Celtic Chief" operations were completed you examined this particular line of which this is a sample, Libellant's Exhibit "O" and from that examination and from what you knew of that line, your examination of it before it was used for the "Celtic Chief" operations, you reached the conclusion that

(Testimony of J. F. Haglund.)

it had a comparatively small strength, or less than fifty per cent? A. I couldn't possibly state.

Q. Did you so testify?

A. I may have done so, I don't remember exactly. I still maintain that it might have half of the tensile strength.

Q. I'm not asking you that all. Have you testified as to your judgment of its strength the day after the "Celtic Chief" operations or compared it with that? A. I don't remember.

Q. Don't you remember that you testified, in response to Mr. Warren's question, that you examined that piece of rope after the "Celtic Chief" operations, during the day after? A. I certainly did.

Q. And haven't you testified on direct that that line, in your opinion, had suffered a certain deterioration? A. I do remember that.

Q. And don't you remember that you testified the amount of that deterioration?

A. I don't remember saying so.

Q. Didn't you testify what, according to your best judgment, was the amount of the deterioration?

A. Yes.

Q. Have you examined this small rope? [3232—2401] A. I have.

Q. Here, to-day, in response to my direction to you to do so in the same way that you did the day after the "Celtic Chief" operations?

A. The line at that time—

Q. Have you done that? A. I have done so.

Q. Now, then, Captain Haglund, will you state what, in your opinion, is the tensile strength of that

(Testimony of J. F. Haglund.)

piece of rope—I am now referring to Libellant's Exhibit "O"—according to your best judgment, knowing what you know about that line both from its use at the "Celtic Chief" operations and its use at the present time?

A. I have testified there may have been a deterioration of fifty per cent, maybe less or maybe more.

Q. Is that your judgment now?

A. That is my judgment.

Q. How much more than fifty per cent?

A. It may be less than fifty per cent.

Q. Do you now think it's less?

A. I don't know.

Q. And that's what you meant to say on direct?

A. So near as I can judge it would be approximately, if anything, a little more.

Q. And if you state less than one-half of its tensile strength on direct did you mean it?

A. If I said so I meant it.

Q. And that was your best judgment at that time?

A. Certainly was.

Q. Now, then, the "Helene" was exerting as much as forty or fifty tons of pressure upon that line?

A. I didn't state that positively.

Q. That was true according your best judgment?

A. She may have, and she may have exerted less; I don't know. I've said dozens of times, I don't tell to a ton. [3233—2402]

Q. Haven't you testified, according to your best judgment, she, at times, just immediately prior to the "Celtic Chief's" floating, that she had as much as forty or fifty tons?

(Testimony of J. F. Haglund.)

A. Not any more at that particular time.

Q. Haven't you testified that immediately prior to the ship's floating, the "Helene," at times, according to your best judgment, was exerting as much as forty tons?

A. Yes, maybe less and maybe more.

Q. You said that was your best judgment, forty tons or more?

A. To my best judgment, at the same time it maybe less and it maybe more.

Q. I'm asking you what your best judgment is. Was it forty tons or more or was it less?

Mr. WARREN.—Object to the question as asked and answered.

A. That's so near as I can remember it. I can't positively state to you in tons how much the breaking strain of that line is and I can't state to you how much power in tons the "Helene" was exerting out there.

Q. Your best judgment was forty tons or more?

A. Forty tons or more, maybe less.

Q. "Did you say, "or less" a few minutes ago when you answered in response to my question?

A. I think I have testified on safe opinions.

Q. Didn't you testify when I first *as* you about that, that in your opinion it was forty tons or more?

A. It may also be less.

Q. I'm asking you if you didn't so testify?

A. I can't answer you.

Q. Now, you've heard read to you the testimony that you gave in response to my question, and you heard that you did testify, in your opinion, it ran as high as forty and even at the minimum forty or fifty?

A. At the minimum. [3234—2403]

(Testimony of J. F. Haglund.)

Q. Now, I am asking you this, Captain Haglund. In your judgment that line was subject to a strain by the "Helene" of forty tons or more immediately prior to the "Celtic Chief's" floating was there anything that happened during the floating of that "Celtic Chief" that served to reduce the strain of that line to a lower point than it was just immediately prior to the floating?

A. Not to my knowledge.

Q. Then, Captain, according to your best judgment, knowing the strain that that line was subjected to as shown by your examination, that line had a breaking strain of forty tons at least after the "Celtic Chief" was floated? A. Not after.

Q. Immediately after the "Celtic Chief" was floated? A. No.

Q. Then the "Helene," was not, according to your judgment, at any time just prior to the time the "Celtic Chief" floated, putting as much as forty tons on it? A. Before she was floated?

Q. Yes. A. To my best judgment?

Q. Yes. A. It may have been.

Q. What happened between the moment, the last time that minimum strain was exerted by the "Helene" and the time the "Celtic Chief" was off, to reduce the tensile strength of that line? What reduced it during that half hour or so?

A. Getting the ship afloat.

Q. When the "Celtic Chief" was floated, the last few minutes, two or three minutes, reduced that strain a number of tons, reduced the tensile strength of that line a number of tons?

(Testimony of J. F. Haglund.)

A. Not the line but the strain on it.

Q. I'm asking you if it isn't true that that line, as far as you know, was not reduced in tensile strength between the last time that the "Helene," according to your judgment, exerted [3235—2404] a forty-ton strain upon it and the time that the "Celtic Chief" was floated. Do you understand my question? A. I do not.

Q. Well, was that line as strong, according to your judgment, immediately after the floating as it was the last time you say the "Helene," when you saw it was exerting a forty-ton strain?

A. No reason why it shouldn't be.

Q. If that is so that line had a strength of forty tons or more immediately after the "Celtic Chief" floated? A. It might have that much.

Q. Isn't it true if your judgment is that it stood that strain immediately before the floating?

A. To my best judgment, I say.

Q. That's all I'm asking you for, whether or not to your best judgment. I don't understand that you calculated the exact tensile strength of that line.

A. I have testified to that.

Q. And your testimony was that the tensile strength of that line was one-half of what it was originally, about twenty-eight tons or less; isn't that what you testified on direct?

A. I now want to say my judgment may not be correct as far as the tensile strength.

Q. I'm asking you now change your statement?

A. No, I haven't changed my judgment.

Q. You still think it only, could only stand a strain

(Testimony of J. F. Haglund.)

of twenty-eight tons or less after the "Celtic Chief" was floated?

A. I couldn't tell you how much it would stand.

Q. Didn't you testify on direct that according to your best judgment as shown to be founded upon your examination of that line the day after the floating of the "Celtic Chief," a rope indicated, upon your knowledge of what that line had [3236—2405] been doing during the "Celtic Chief" operations, that its tensile strength had been reduced one-half or more? A. Maybe so.

Q. And you now testify that immediately prior to the floating of the "Celtic Chief," according to your best judgment, a strain of forty tons was put upon that line and that the line, according to your judgment did not reduce? A. I don't think so.

Mr. WARREN.—I object to that question as multiplicitous, your Honor.

Mr. OLSON.—I withdraw the last question then in order to make it plain.

I'll ask you, Captain. And you now say, do you not, that that line, after the "Celtic Chief" operations, according to your best judgment, had a tensile strength of forty tons or more, in view of the fact that you have testified that immediately prior to the floating of the "Celtic Chief" a strain of forty tons was put upon it and nothing occurred to reduce that strength?

Mr. WARREN.—I object to that as asked and answered.

The COURT.—The objection is overruled.

(Question read.)

(Testimony of J. F. Haglund.)

A. I don't understand that question, Mr. Olson.

Q. You don't? A. No, I do not.

Q. Now, let's come back to the "Likelike" for a moment. What is your judgment as to what the tensile strength of the "Likelike's" line was immediately after the "Celtic Chief" was floated as shown by your examination of the "Likelike's" lines?

A. I don't know.

Q. What?

A. I don't know the tensile strength.

Q. You can't even give an approximation according to your [3237—2406] best judgment?

A. How much the tensile strength was after the ship was floated?

Q. Yes, as compared to what it was when the line was furnished to the "Likelike" to go out there to the "Celtic Chief."

A. Not to a pound or a ton either.

Q. What? A. Not to a ton exactly.

Q. Did you appreciate that I just asked you for you to state approximately according to your best judgment?

A. Maybe up to between fifteen and twenty ton tensile strain on it.

Q. That is, you say, when you say the tensile strain on it, you mean that was its tensile strength after the "Celtic Chief" commenced that way?

A. No, that's the tensile strain I think was put on it.

Q. I want to know what you think its tensile strength was as shown by your examination the day after. A. Just the same.

Q. How much according to your best judgment?

(Testimony of J. F. Haglund.)

A. Anywheres between five and twenty tons.

Q. Fifteen and twenty tons?

A. To my best judgment that line had a tensile strength of twenty-five pounds at the beginning of their operations. Approximately that.

Q. And, according to your best judgment, its tensile strength had reduced over five or ten tons on account of its use at the "Celtic Chief" operations?

A. Maybe less, maybe more.

Q. Well, that's your best judgment, isn't it?

A. My best judgment.

Q. Then you are prepared to say, still, that the "Likelike," according to your best judgment, was exerting as much as twenty tons force upon that line immediately prior to the floating of the "Celtic Chief"? [3238—2407] A. I think maybe more.

Q. If that is so that line must have had a strength of twenty tons or more immediately after the floating of the "Celtic Chief"? A. After?

Q. If what you say is true, that the "Likelike" was exerting a force upon that line immediately prior to the floating of the "Celtic Chief" of twenty tons or more, I say, if that is true, isn't it also true that that line had a tensile strength of twenty tons or more immediately after the floating?

A. The line may have had a strain there. The line was the same.

Q. I'm asking you to answer this question: If the "Likelike" exerted, according to your best judgment, immediately prior to the "Celtic Chief's" floating, a strain upon that line of twenty tons or more and the line did not break, isn't it also true, if

(Testimony of J. F. Haglund.)

your judgment is correct in that respect, that that line was capable of withstanding a strain of twenty tons or more without breaking?

A. It might and it might not. I can't tell and I don't think anybody else could.

Q. In your judgment was that line as strong after the floating of the "Celtic Chief" as it was immediately prior thereto?

A. No reason, in my judgment, why it shouldn't be, at the same time I can't possibly state.

Q. Now, then, if that line was as strong immediately prior to the floating, immediately after the floating as it was immediately prior to the floating of the "Celtic Chief," and if, immediately prior to the floating of the "Celtic Chief" the "Likelike" exerted a strain upon that line of twenty tons or more, doesn't it necessarily follow, if your judgment is correct, that that line was capable of standing a strain of twenty tons or more after the floating of [3239—2408] the "Celtic Chief"?

Mr. WARREN.—I object to the question as once asked and answered, your Honor.

The COURT.—Objection overruled.

A. I have stated, Mr. Olson, so far as I know, in my best judgment there's no reason why it shouldn't be as strong previous, after floating, as previous, before she floated, but, at the same time, I can't positively say so.

Q. I'm assuming that it was as strong immediately after the floating as it was immediately before the floating of the "Celtic Chief." If that is true, and if your judgment is correct that the "Likelike" placed a strain of twenty tons or more immediately

(Testimony of J. F. Haglund.)

prior to the floating of the "Celtic Chief," isn't it necessarily true that that line could stand a strain of twenty tons immediately after the floating of the "Celtic Chief"?

Mr. WARREN.—I object to the question as asked and answered.

The COURT.—Captain Haglund, can you answer that question "Yes" or "No," so there will be no question about the matter? I understand your answer was iresponsive but there may be some question about it.

(Question read.)

A. That's the closest I can answer it, your Honor.

Q. If a line withstand a strain of twenty tons, actual strain put on it, of twenty tons, that's its tensile strength, isn't it at least? It has that tensile strength at least? A. When it's new?

Q. I don't care whether it's new or not. If a line withstands a strain of twenty tons, that is its tensile strength at that time, at least, is it not? A. Yes.

Q. And if, five minutes later, nothing has changed or altered it that's its tensile strength? I assume there was no [3240—2409] change and I ask you to assume there was no change.

A. But I know there was a change.

Q. You know, do you, that that line deteriorated in strength? A. Less strain put on it.

Q. I'm asking you about the strength of the line. What difference does it make as to the strain on the line as to this line? I'm asking you if it's true that a line can stand a strain of twenty tons and then there is no change in it, if its tensile strength is not twenty tons?

(Testimony of J. F. Haglund.)

A. How do I know that there was no change?

Q. I'm telling you that there was no change.

A. I know there was a change.

Q. In strength?

A. Certainly. If you put a strain on that piece of rope, maybe twenty ton, maybe it will not break, but you will put a strain of twenty ton again, it may break.

Q. Assume that there was no change.

A. If there was no change it would be the same.

Q. And, haven't you testified that as far as you know that line was as strong immediately after the floating as immediately before and you never made a change? A. If there was no change—

Q. Didn't you say there was never a change?

A. Yes, but if you put the same strain on a line—

Q. Haven't you stated as far as you know there was never a change in the strength of that line?

A. Not so far as I know.

Q. Now, you say, do you, that there was a greater strain exerted upon the "Mikahala's" starboard line than its port line? A. At that time, yes.

Q. When was that? What time?

A. From Monday morning until Wednesday night.
[3241—2410]

Q. Now, after the port line was made fast, was there any more strain exerted upon that starboard line than on the port line?

A. The strain exerted on both, which was the heavier strain? I am not prepared to state.

Q. Have you any idea about it?

A. There was so near alike as they possibly could be made.

(Testimony of J. F. Haglund.)

Q. If that is so, there was not exerted on the port line a strain that was equal to its breaking strain?

Mr. WARREN.—I want to interpose another objection. This point isn't certainly, upon the cross-examination on Mr. Weaver's examination.

The COURT.—I will hold you down to certain limits, Mr. Olson.

A. They never broke, no.

Q. If there was about an equal strain upon the two lines and the starboard line was the weaker of the two, that means, does it not, that the full strain put upon the port line was only equal to that put upon the starboard line?

A. If there was equal strain on it.

Q. In other words, less than the tensile strain of the port line, isn't that so? A. That's so.

Q. Do you know how many tons of effective power the "Mikahala" could transfer to those lines?

Mr. WARREN.—I'd like it understood that the same objection is made as to all this line of testimony.

The COURT.—The record will show that to be the case.

A. Not exactly in tons.

Q. Well, do you know approximately?

A. About half the tensile strength of them lines, as near as I could judge.

Q. Could the "Mikahala" exert that much strength, that much [3242—2411] power upon those line pulling on an object that was fixed in smooth water? A. No.

Q. Well, how much could she do, approximately. that way? A. A little bit more.

Q. How much would that be, three or four tons?

(Testimony of J. F. Haglund.)

A. In any event four tons.

Q. Not more than four tons?

A. Not more than four tons.

Q. How much more was she able to exert by reason of the conditions existing out there?

A. A great deal more, how much I couldn't tell.

Q. How many more do you think?

A. I couldn't state.

Q. Judging from what you saw of the "Mikahala's" line, how much strain do you think was exerted at the maximum by the "Mikahala" on her lines immediately prior to the floating of the "Celtic Chief"? A. Just about all the lines could stand.

Q. What?

A. Just about all the lines could stand without breaking.

Q. Now then, you examined the port line, did you not, after the "Celtic Chief" operations?

A. Yes, examined all the lines.

Q. How long had that been used by the "Mikahala"?

A. From Tuesday morning until the ship was floated.

Q. From Tuesday morning until the ship was floated? A. Yes.

Q. Now, what had been the deterioration, according to your judgment, of that line from the time she began to use it when it was new and during the "Celtic Chief" operations until the time that the "Celtic Chief" was floated?

A. I don't remember now whether it was Tuesday or Wednesday morning.

(Testimony of J. F. Haglund.)

Q. How much deterioration had that rope suffered, according [3243—2412] to your judgment, as compared to what it was when the "Mikahala" first began to use it? A. Not so very much.

Q. How much do you think?

A. I don't remember exactly now in what condition it was. It was pretty good line, the port line was.

Q. It was a twenty-five ton line, a line that would stand a twenty-five ton strain? A. Yes.

Q. And it hadn't suffered much deterioration?

A. Not so much as the deterioration to the other lines.

Q. Do you mean that it had reduced five or ten tons in strength? A. Maybe so.

Q. Is that your best judgment?

A. So near as I can remember.

Q. Between five and ten tons?

A. As near as I can remember. It was two years ago and I don't remember how the "Mikahala's" lines looked.

Q. You've testified concerning other comparative tensile strengths, have you not?

A. So near as I can remember.

Q. Now then, the starboard line had suffered more, had it? A. Yes.

Q. That had suffered a fifty per cent or over, reduction in strength? A. Maybe.

Q. That is your judgment

A. So near as I can remember.

Q. So its tensile strain would be twelve tons or thereabouts? A. Maybe more, maybe less.

(Testimony of J. F. Haglund.)

Q. That's your best judgment?

A. So near as I can remember.

Q. If that had a tensile strength of twelve tons and the port line had a tensile strength of fifteen tons or twenty tons possibly, do you mean to say that at the maximum the "Mikahala" was exerting a strain of from twenty-seven to thirty tons or over on those two lines immediately prior [3244—2413] to the floating of the "Celtic Chief"?

A. Perhaps she was, perhaps she wasn't.

Q. Is not that your judgment?

A. So near as I can remember that would be my judgment.

Q. How could there be an equal strain upon those two lines if the tensile strength of the two lines combined is as much as you have said and yet the "Mikahala" was exerting practically the full breaking strain of those two lines? How could there be an equal strain upon both?

A. If you've got two lines, Mr. Olson, when you know one is stronger than the other, the way to get an equal strain would be for your best line to be hauled, pulled tauter than the weak one?

Q. Did that appear to be so from the examination of those lines? A. So near as I can remember.

Q. You remember that the port line was more taut than the starboard line?

A. So near as I can remember the heavier strain was put upon the best line of the two. That's what we call equalizing the line.

Q. How do they equalize those lines?

A. To the sailor's best judgment.

(Testimony of J. F. Haglund.)

Q. Was that done at the beginning when the second line was put on board?

A. After it was stretched.

Q. It was? A. Certainly it was.

Q. Was any change made in the tautness of those two lines?

A. A new line would stretch considerably more than a line that had already been stretched. They had to be equalized to get the slack in of a new line. That's the only way you could get an equal strain on them.

Mr. OLSON.—I think that's all.

Redirect.

Mr. WARREN.—On cross-examination, Captain, you said that [3245—2414] you had knowledge of the contents of that mail contract of the "Mauna Kea" that was in force in December, 1909. I ask what do you know of—and you also said that you knew there was a penalty clause in it. Now, I ask you what do you know of that?

Mr. OLSON.—I object to the question on the ground it is not the best evidence.

The COURT.—The objection is sustained.

Mr. WARREN.—Now, Captain, Mr. Olson has exhibited to you a piece of wire which is on file in this Court for identification and marked "Libellants' Exhibit 7, Haglund," being piece of cable before you, and you were asked whether or not this was a part of one of the lines used between the "Arcona" and the "Celtic Chief," to which you answered, "It may be a part of one of those lines." Do you remember, Captain, which line this is, the one that left the "Ar-

(Testimony of J. F. Haglund.)

cona" from its starboard or port quarter?

Mr. OLSON.—Object to the question, if the Court please, on the ground it is not proper redirect testimony, and further on the ground it's assuming something that counsel has no right to assume.

Recess.

Mr. OLSON.—I object to it on the ground it is leading.

The COURT.—I will admit the question, Mr. Warren, then if you can show me to-morrow or when we resume hearing that the evidence is otherwise, I will allow it. I allow the question as limited, Mr. Warren. If I am convinced that you are right I will take the matter up again, if you so desire.

Tuesday, November, 7, 1911.

Mr. OLSON.—In order to make unnecessary any testimony on the point to be covered by the admission which I now propose [3246—2415] to make, I admit that the sample of wire line to which reference has been made by counsel and which has been marked in this case "Libellee's Exhibit #7 for Identification," is a part of the line which belonged to the "Celtic Chief" that was used by the "Arcona" and that it is not a part of any line used by the "Arcona" which belonged to the "Arcona."

Mr. WARREN.—I'd like my answer to that to go into the record, your Honor, that the admission distinctly evades the particular point which it is my purpose to prove. This admission goes no further than to say that this is a part of the "Celtic Chief" wire. If counsel will make his admission that the wire of which this is a part was this size from one

(Testimony of J. F. Haglund.)

vessel to the other, or if he will admit that the "Celtic Chief" wire of which this is a part itself completed the entire line between the "Celtic Chief" and the "Arcona," I will accept that admission, but no other.

I'd like to have go on the record, your Honor, that I decline—

Mr. OLSON.—I object to counsel making any statement going on the record on the ground it is not testimony.

The COURT.—I will strike it out.

Mr. WARREN.—I wish to have it on record in this case, your Honor, that that admission does not go to the extent of the facts that I'm entitled to show on this examination. Counsel offers to admit that this is a part of the "Celtic Chief" wire. I know it is; he needn't admit it. I propose to prove to your Honor that this "Celtic Chief" wire was only a part, the "Celtic Chief" wire as a whole was only a part of the whole wire which ran between those vessels and part of it was made up of the whole "Celtic Chief" wire, a sample of which is before the Court, and the rest of it was made up by the "Arcona" wire.

[3247—2416]

Mr. OLSON.—I object to the offer of proof, because I think it amounts to an offer of proof. I object to the offer of proof on the ground that there was nothing in the cross-examination of this witness tending to show that the whole of either of the wires used by the "Arcona" was composed of wire cable of the kind or size of which Libellee's Exhibit #7 for identification is a sample; there is nothing to

(Testimony of J. F. Haglund.)

show that the whole of either of those wires was composed of that kind of cable; there is nothing in the cross-examination of Captain Haglund tending to show that, and, therefore, it is improper redirect. I have admitted of record which of the two lines the same or exhibit is a part of and that is all that counsel is entitled to go into, and as I have not brought out anything in cross-examination of this witness which could, by any interpretation, be regarded as testimony that the whole of that line was composed of wire of that kind—

Mr. WARREN.—I withdraw the question.

Q. Now, Captain, Mr. Olson has handed you this sample, a piece of wire, which has been marked for identification in this case as Libellee's Exhibit 7 for identification. Captain Haglund, I ask you whether or not you are prepared to say, in view of your testimony that the "Arcona" wires, the lines the "Arcona" and the "Celtic Chief" were one-inch, whether you are still prepared to say on seeing this sample that this sample could not be a part of one of the wires used by the "Arcona" to which you replied it may have been a part of it. He asked you further, "It may have been a part of the one that belonged to the 'Celtic Chief'; isn't that so? A. That may be a fact." Now Captain, in answering that this sample may be a part of one of the wires used, one of the lines used by the "Arcona," I'll ask you if you know of which line this may be a part?

Mr. OLSON.—I object to the question on the ground that it's [3248—2417] improper redirect;

(Testimony of J. F. Haglund.)

furthermore, on the ground that the admission just made in the record fully covers the point that this is a part of the wire which was supplied by the "Celtic Chief" to the "Arcona" for use and is not a part of any of the wires belonging to the "Arcona" used by the "Arcona."

I'm willing to admit further, whichever counsel says of the two sides of the "Celtic Chief" the line of which this is a part passed on.

Mr. WARREN.—Your Honor, I'm not a witness in this case and the witness, as well as I, can say which side this line ran on, and if counsel is willing to admit it why is he unwilling to have the witness answer it?

The COURT.—I am going to allow this question.

Mr. OLSON.—Over my admissions, if the Court please?

The COURT.—Yes.

Mr. OLSON.—Now, then, I wish to admit of record that all that Captain Haglund referred to in the cross-examination of Captain Haglund when he referred to this sample was that it was a part only of one of the lines and that he did not intend to say that the whole line extending from the "Celtic Chief" to the "Arcona" on either side was composed of cable of that kind or that size, and I further wish to admit that so far as the claimant is concerned in this case that there is no inference wished to be drawn from Captain Haglund's testimony that he intended to say that the whole of the line running from the "Celtic Chief" to the "Arcona" was com-

(Testimony of J. F. Haglund.)

posed of wire of an inch and a quarter of which this is a sample.

Mr. WARREN.—I decline to accept the admissions because they do not cover the point.

The COURT.—I am going to allow this.

Mr. OLSON.—Then, your Honor, I ask to submit some authorities on the point.

I'd like to have the record show that my objection [3249—2418] is based further on the ground that it's improper redirect in view of the fact that this witness on direct testimony testified that the wire in question, of which this sample was a part, was composed in part of wire supplied by the "Celtic Chief" and about half by the "Arcona" and that these two lines were bent together in the center, as far as the witness could judge, and the matter having been covered by direct cannot be gone into again on redirect, especially in view of the fact that I did not question the witness anything particular with reference to the wires supplied by the "Arcona" itself on my cross-examination.

The COURT.—I've taken my time in this matter because I have authority that authorizes me to rule as I have so far ruled. I don't want to be unfair; I want to preserve the ordinary course. From the testimony, as far as possible; it does seem though that this could be taken a part of the matter in question which explains or qualifies the statements made in cross-examination.

Mr. OLSON.—Even in view of what he stated on direct?

The COURT.—It goes.

(Testimony of J. F. Haglund.)

Mr. OLSON.—He didn't even make a statement that it was a part of the "Celtic Chief" wire. He said it may have been and then I'm to be subjected to examination about the whole lot of wires that I never went into on cross-examination at all.

The COURT.—I'd like to have the question read.
(Question read.)

The COURT.—The admission seems to cover the question there.

Mr. WARREN.—I'll take a ruling on the question that I put.

Mr. OLSON.—Then, your Honor, as I understand it, is prepared to sustain my objection to that question?

The COURT.—I will withdraw my ruling last made and sustain [3250—2419] the objection in view of the admission of Mr. Olson which seems to cover the point.

Mr. WARREN.—Captain, I direct your attention to the following portion of your testimony in chief, "Where was the wire, or the second wire coming from?" to which you answered, "From the 'Arcona.'"
Q. I mean which vessel, was it an 'Arcona' wire or 'Celtic Chief' wire? A. The first wire, that is, not the wire that parted by the next one run after that, or half of it, was a 'Celtic Chief' wire and the other half was the 'Arcona's', bent together about the center so far as I could judge from the ship. Q. Do you know the size of those wires? A. One-inch diameter, three-inch circumference." And then to a further question put to you by counsel on cross-examination, he having handed you the sample of

(Testimony of J. F. Haglund.)

wire which is now before the Court and marked Libellee's Exhibit 7 for identification, Captain Haglund, I'll ask you if you were prepared to say that neither of the lines which the "Arcona" attached to the "Celtic Chief" was as large as that, to which you answered, "I do." He then asked you, "Are you still prepared to say, Captain Haglund, that this piece of wire rope that I showed you could not be a part of one of the lines used by the 'Arcona'?" to which you answered, "It may have been a part of it." Now, in view of your testimony that in your judgment those lines were inch in diameter and the fact that this sample is an inch and a quarter in diameter, I'll ask you if you can explain the discrepancy in your statement of the size of the wire on direct testimony and the fact that this piece is an inch and a quarter?

Mr. OLSON.—Object on the ground that this witness testified that this was a part of the wire, and further on the ground it is incompetent, irrelevant, and immaterial and too general; furthermore, I object on the ground it is leading. [3251—2420]

To cut the time short, I'll make a further admission that the witness, when he stated that the lines were an inch in diameter only, was referring to the wires which were not supplied by the "Celtic Chief."

Q. Now, Captain, referring to this sample of wire which is before the Court marked for identification, I'll ask you what kind of a hawser is that.

A. That's what a practical seafaring man will call a four-inch galvanized hawser.

Q. Used for what.

(Testimony of J. F. Haglund.)

Mr. OLSON.—Objection to the question on the ground that it is not proper redirect.

The COURT.—I sustain the objection.

Q. It being admitted, Captain, that this sample of wire before the Court was a part of the "Celtic Chief" wire which "Celtic Chief" wire was a part of one of the wires running between the "Arcona" and the "Celtic Chief," you having stated that you examined the wires at the "Celtic Chief." I'll ask you how did the other portion of that wire compare in condition with the condition of this sample.

Mr. OLSON.—Object to the question on the ground that it's improper redirect.

The COURT.—Sustain the objection.

Mr. WARREN.—Will your Honor allow me—

The COURT.—Yes.

Mr. WARREN.—I wish to have it appear on the record in this case that I admit that the sample wire before the Court is part of the wire of the "Arcona" furnished by the "Celtic Chief."

The COURT.—I'm afraid it isn't strictly cross-examination, Mr. Warren.

Mr. OLSON.—Redirect.

The COURT.—Redirect, yes.

Recess.

Q. Captain, after the "Celtic Chief" had been pulled off the [3252—2421] reef and towed to an anchorage off the harbor, I'll ask you if you knew at the time anything of the condition of her bottom.

A. I did not.

Q. Referring now, Captain, to the sketch which

(Testimony of J. F. Haglund.)

you made and which is on file as Libellee's Exhibit 8, Captain Haglund, and to your answer on cross-examination respecting this exhibit that the angle of the Miller anchor-line with the bottom is here shown to be less than the angle of the "Helene" anchor-chain with the bottom, if both lines are straight, I'll ask you if you know what were the actual angles formed by these lines on the bottom.

Mr. OLSON.—Object to the question on the ground that it's obvious that the captain cannot know for the reason that the lines were buried in the water anywhere from three, four, five, six or seven fathoms of water and, therefore, it must be the conclusion of the witness and the captain has testified that he did not know the weight of the Miller anchor-line.

Add to the objection that I object further on the ground that the witness is not shown to be qualified as to that.

Mr. WEAVER.—I wish to have my objection noted. The same objection, no use repeating the objection.

The COURT.—I sustain the objection.

Q. When you answered counsel, Captain, that the angle formed by the Miller line with the bottom as shown by this diagram is less than the angle formed by the anchor-chain of the "Helene," why did you make part of that answer the statement, "if both were straight"?

Mr. OLSON.—I object to the question on the ground it is immaterial, and furthermore on the ground that the question that was asked him on cross-examination was directed to [3253—2422] straight

(Testimony of J. F. Haglund.)

lines between the anchors and the respective boats to which the anchor-chains and the anchor-lines were attached and did not assume any chain, that the "Helene's" chain was in a position of a straight line, neither did it assume that the Miller line was not a straight line.

Mr. WARREN.—Then I move to strike this exhibit from the files on the ground it is incompetent, irrelevant, and immaterial.

The COURT.—The motion is denied.

The objection is sustained.

Q. In view of your general experience, Captain, in the handling of anchors, anchor-chains, and lines, I'll ask you to state what elements or factors do you take into consideration to determine what would be the angle formed by an anchor-line or chain with the bottom.

Mr. OLSON.—Object to the question on the ground it is not proper redirect.

Mr. WEAVER.—I object to this question on the ground it is not proper redirect examination.

The COURT.—I allow the question.

(Question read.)

A. The factors to be considered in this would be the distance and the weight of the cables from the object it was fast to.

Q. The distance of the anchor from the object to which it is attached. Now, in the case of the "Helene"—I am referring now to Libelee's Exhibit #8—I'll ask you between what points would you indicate a line should be drawn to ascertain the real angle formed even on a straight line theory with the

(Testimony of J. F. Haglund.)

bottom by the "Helene" anchor-chain?

Mr. OLSON.—I object to that as calling for a conclusion of the witness and on the ground it is opinion evidence on a matter on which this witness has not been shown to be [3254—2423] qualified to answer.

I withdraw the objection.

A. It should have been drawn from the stern of the "Celtic Chief" to the "Helene's" anchor as well as the straight line from the "Celtic Chief" to the Miller anchor. The "Helene" is merely acting there as a buoy to the connection between the "Celtic Chief" and her anchor here on that angle.

Q. Why do you say the "Helene" was really a buoy in the middle of that line?

A. Because she was fast to the "Celtic Chief" with a towline and her power on her anchor-chain.

Q. Then, will you draw on this exhibit a line which you believe should be the correct line to ascertain that angle?

Mr. OLSON.—I object to that, if the Court please, on the ground it will obviously destroy the effect of the exhibit; furthermore, on the ground that such a line would not accurately represent the line of the "Helene's" anchor-chain if it were in fact taut, for the reason that the anchor-chain did not lead to the "Celtic Chief" but to the buoy of the "Helene" and from the buoy of the "Helene" to the "Celtic Chief's" stern.

The COURT.—Have the record show that the line is indicated with red ink.

Mr. WARREN.—What difference does it make

(Testimony of J. F. Haglund.)

that the "Helene" was floating?

Mr. OLSON.—Object to the question on the ground it is not proper redirect testimony.

Mr. WEAVER.—Same objection.

Mr. OLSON.—And immaterial.

The COURT.—I am going to allow the question.

A. She was acting as a weight upon the bight which formed between the "Celtic Chief" and her anchor. If the strain could have been put on severe enough, it would in this particular case have lifted her stern and lowered her bow and [3255—2424] would then practically have formed a straight line if she had laid nearer to the "Celtic Chief."

Q. How many bags of fertilizer, Captain, comprised the average sling load hauled up by the donkey on the barge that was brought alongside the ship?

A. As far as I saw it was never any less than six or eight hoisted up by the donkey from the barge.

Q. Under the conditions prevailing out at the "Celtic Chief" on, we'll say, Tuesday and Wednesday, Captain, how many more anchors, in your judgment, might have been or could have been laid and connected with the "Celtic Chief" to be used similarly as the Miller anchor was used with the vessels as they were on Tuesday and Wednesday?

A. We had six spare anchors out there.

Q. I say, approximately how many could have been laid had the operation have been considered necessary?

A. Six was all that we had on board our steamer at that time, six spare anchors which could have been laid, if necessary.

(Testimony of J. F. Haglund.)

Q. What was their weight?

Mr. OLSON.—I object to all of this testimony on the ground that it's not proper redirect. I move to strike on the ground that the answer is not responsive.

Mr. WARREN.—No objection to that.

The COURT.—Very well, so ordered.

Q. Now, will you answer the question, Captain? How many anchors could have been laid under the conditions that existed out there Tuesday and Wednesday?

A. All of them six anchors could have been laid if there had been need of it.

Q. How long, in your judgment, Captain, would it take to bring out a donkey-engine of the same kind that was on the barge and rigged it in position on the "Celtic Chief" to be used in heaving on an anchor laid out in addition to the others that were there and to get an effective strain to [3256—2425] get the line taut? A. That all depends.

Q. What is that?

A. It greatly depends on who were doing it.

Q. Assuming that the Inter-Island were doing it?

A. Well, it probably could be done easy enough in a day under the weather conditions that prevailed out there. There may have been other times that it couldn't be done if the swell had been a little greater it could not be done.

Q. Taking the conditions as they existed out there, you think it could have been done in one day if the Inter-Island did it?

A. I think so, if the Inter-Island did it.

(Testimony of J. F. Haglund.)

Q. In speaking, Captain, of the possibility of the hawser of the "Mikahala" breaking and her swinging around toward the "Arcona," you were asked to state how long it would take, in your judgment, for the "Mikahala" to get around, to which you answered you thought it would be three or four minutes. Now, I'll ask you in view of your knowledge of the conditions as they existed out there until the time on Wednesday after the "Arcona" had taken the position, which, according to your testimony, she maintained thereafter, how long would it, in your judgment, have been,—have taken the "Arcona" to have gotten out of the way of the "Mikahala" supposing the "Mikahala" were to swing around that way?

Mr. OLSON.—Object to the question on the ground that it doesn't appear that the witness is qualified to answer.

Mr. WARREN.—Withdraw the question and ask you, Captain, how long at least would it, in your judgment, have taken for the "Arcona" to have gotten out of the way?

Mr. OLSON.—Object to the question on the ground that it doesn't appear that the witness is qualified to answer.

The COURT.—The question ought to be limited to elements of [3257—2426] which the witness clearly has knowledge. This is a general question asking for an answer, presuming that he has general knowledge, I don't think he has.

Mr. OLSON.—I understand that the objection is then sustained.

(Testimony of J. F. Haglund.)

The COURT.—I don't see how I can do anything else but sustain the objection at this time unless his qualifications are shown more clearly.

Q. You having on cross-examination, Captain, admitted to counsel that the "Arcona" might have gotten out of the way in three or four minutes, I'll ask you how long, in your judgment, would it have taken the "Mikahala" to have swung around to her anchor had she parted her hawser, under the conditions existing there on Wednesday afternoon?

A. On Wednesday afternoon when the trade wind was blowing it wouldn't have taken the "Mikahala" as long as three or four minutes to swing down upon the "Arcona."

Q. Now, about this preventer in connection with the Miller line and the shackle connecting the Miller wire with the manilla hawser, will you tell us exactly what you observed? Not any conclusions that you've drawn or what you've learned afterwards, but what you saw exactly take place out in the boat when this preventer was rigged?

Mr. OLSON.—Object to the question on the ground it is not proper redirect.

Mr. WEAVER.—Object to the question on the ground it is not proper redirect examination.

The COURT.—I am going to allow that question with the right to the other side to cross-examine upon it if they so desire.

(Question read.)

A. I saw the wire, the end of the wire put in the boat, run underneath the "Celtic Chief's" hawser, the "Miller's" hawser, until he got to the shackle.

(Testimony of J. F. Haglund.)

It was lifted up by the men in the boat. [3258—2427]

Q. What was lifted up?

A. The shackle, the end of his wire was rove through it and the boat was pulled back to the "Celtic Chief" and that ended it.

Q. How long did the boat remain at the shackle?

A. Maybe a minute or two, maybe less. I didn't time them exactly.

Q. Did you see anything else?

A. I saw the end of that wire passed aboard the ship again.

Q. Now, how was that end brought aboard the ship? A. With a small line.

Q. What's that?

A. With a small line, and after that small line attached to the end of the preventer it was brought back on board the "Celtic Chief."

Q. What was done then?

A. It was hauled inboard and made fast.

Q. How long was that line that was attached to the end of it, how much did they pull in before they got the end of that line on deck, approximately?

A. I don't *under* that question clearly.

Q. You say they attached a line to the end of that wire after they put it through the shackle then they rowed back taking the line with them as they rowed?

Mr. OLSON.—I object to the question on the ground it is leading.

Q. Tell us what the boat did coming back.

A. It was hauled back and this line was made fast to the end of the wire. How long it was in feet I couldn't state, but it was long enough to reach where

(Testimony of J. F. Haglund.)

the shackle were, maybe fifty or sixty, maybe more feet from the "Celtic Chief." That was hauled back after and the wire was hauled on board.

Q. Did you see any operations in connection with that preventer down at the shackle after that? [3259—2428] A. No, I did not.

Mr. OLSON.—If that's all on that point, I think this is the proper place to cross-examine. Now then, Captain Haglund, did you actually see the shackle?

A. On the boat gunwhale but not after that.

Q. Where were you?

A. On the stern of the "Celtic Chief."

Q. And you saw this boat go out there?

A. I saw this boat go out there.

Q. And you actually saw the shackle?

A. I saw the shackle but the size of the shackle I couldn't from that distance determine.

Q. Did you see what the men were doing with that shackle? Did you see them handling it?

A. They lifted it up out of the water to reeve this wire. I could see that from the "Celtic Chief."

Q. Are you prepared to state there was nothing else done to that shackle?

A. Not to my knowledge.

Q. You don't know? A. Not after that.

Q. And you didn't see the men do anything else at that time in connection with it?

A. I did not.

Mr. OLSON.—That's all I've got to ask about that.

Mr. WEAVER.—Were you watching this shackle from the "Celtic Chief" after the men had been put-

(Testimony of J. F. Haglund.)

ting on the preventer?

A. The shackle was in the water again.

Q. Had you seen the shackle all the time thereafter?

A. Have I seen it after this work was done?

Q. Did you watch that line where the shackle was?

A. No, I couldn't see the shackle after that.

Q. Were you watching them?

A. The shackle was in the water.

Q. Do you know whether it was taken up again?

A. Not that I know of. [3260—2429]

Q. Do you know whether there was any change made or anything done in regard to these lines through the shackle?

A. Not to my knowledge.

Q. Were you looking?

A. I wasn't paying attention.

Q. Weren't you walking around the "Celtic Chief's" main deck after that?

A. On the main deck?

Q. Yes. A. I was all over the ship.

Q. After you saw these, after you saw the line?

A. I say I was around every part of the ship, yes.

Q. When was this preventer put on?

A. I didn't look at the time.

Q. Daylight or night-time? A. Daytime.

Q. Then you don't know whether anything was done with that preventer line after that?

A. I don't, not after that. I only saw it rove through the shackle and the same end put on the "Celtic Chief" again.

Q. Do you know how this preventer was rove through the shackle?

(Testimony of J. F. Haglund.)

A. I don't understand.

Q. Do you know how this preventer was fastened to the shackle from actually seeing?

A. The end rove through the shackle.

Q. How do you know that? A. I saw it.

Q. Did you see the end put through?

A. I certainly did.

Q. I thought you said you didn't see this shackle?

A. After and before it was put on.

Q. You saw it that particular time?

A. At that particular time I saw it maybe for a minute, maybe less.

Q. Do you know how the wire was put through it?

A. The end of the wire was rove through the shackle and a small line bent on and hove back to the "Celtic Chief," the boat and the wire also.

Q. Do you know whether or not there was only the one taken? [3261—2430]

A. I never saw them bring any back.

Q. Do you know whether there was?

A. Not to my knowledge.

Q. Were you looking at that time?

A. I was looking at that particular time.

Q. And you say there was none?

A. I say there was none.

Mr. WEAVER.—That's all.

Mr. WARREN.—Q. On your cross-examination, Captain, speaking of the towing power of the steamer in smooth water and out on the swells, you said the weight of the ship was added and the amount of the swell, like, for example, as you said, the "Likelike"

(Testimony of J. F. Haglund.)

weighing up and down on the bight. I ask you if you can illustrate to the Court what you mean, say by use of a string.

Mr. OLSON.—I don't understand the question yet.

(Question read.)

I object to the question on the ground that it assumes something that is not in the testimony at all.

The COURT.—I don't see that there is any need for that, Mr. Warren. You have the statement, and it seems to me that it's cumulative.

Mr. WARREN.—Your Honor disallows the question?

The COURT.—Yes, I don't see that the question would be of assistance.

Q. In testifying, Captain, that when a ship rises in a swell and thus increases the force which is exerted on a line of which she is a part as in the case of the "Helene" and her line to the "Celtic Chief," and her anchor-chains, I'll ask you how, what factors you take into consideration in judging how much difference the rise of the vessel will make in the effective pull. What governs it?

A. The amount she rises and falls, whatever height it is, and sometimes the swell would have some effect on the line and anchor-chain than it would [3262—2431] in bigger and heavier swells.

Q. Anything else?

A. The swell may be big enough to part the line and the anchor-chain also which happen very often in cases.

Mr. WARREN.—That's all.

(Testimony of J. F. Haglund.)

Recross.

Mr. OLSON.—Q. Was the “Celtic Chief” leaking when she came off the reef? A. I don’t know.

Q. It would have been comparatively easy to find out, would it not? A. I didn’t inquire.

Q. You didn’t inquire? A. I did not.

Q. As far as you know she was not leaking?

A. Not to my knowledge.

Q. You didn’t ascertain or learn that there was anything indicating, that there was anything the matter with her bottom? A. I never heard any.

Q. And you didn’t ascertain of anything during the time that she was on the reef or thereafter?

A. Not that I can remember. I did see the ship sounded several times.

Q. And there was nothing there to indicate that there was any water in her hold?

A. Not that I saw.

Q. At any time? A. Not that I saw.

Q. What does a buoy do, does it sink or float?

A. Sometimes they sink.

Q. Does a buoy that’s a good buoy sink?

A. No.

Q. Also, a vessel is supposed to float and not to sink? A. Supposed to, yes.

Q. Now, the “Helene” was the kind of a vessel that wouldn’t sink at that time, wasn’t she, under the conditions there prevailing?

A. She didn’t sink, no. [3263—2432]

Q. And isn’t it the fact that she was so constructed that she floated and was pointing like an ordinary vessel in good condition?

(Testimony of J. F. Haglund.)

Mr. WARREN.—I admit it.

Q. Isn't that so? A. So far as I know.

Q. Now, then, Captain Haglund, are you prepared to say that the "Helene's" manilla hawser running from her stern to the "Celtic Chief's" stern was in a straight line, kept in a straight line during the pull of the "Helene"?

A. Good deal straighter than the chains; that I can assure you.

Q. Was it in a straight line?

A. Certainly not.

Q. Now, are you prepared to say that her anchor chains were in a straight line? A. Certainly not.

Q. Was the "Helene" a weight in the combined line of the chains and her hawser?

A. She was to a certain extent.

Q. Didn't the "Helene's" hawser come up, ascend from its bed to the stern of the vessel?

A. Not so much as the chain by any means.

Q. That isn't the question. I asked if the "Helene's" hawser didn't ascend from its bed to the stern of the "Celtic Chief"? A. Very little.

Q. It did some, didn't it?

A. Very little, very slightly.

Q. Answer my question? A. Very slight.

Q. There was a bight in the middle of the rope?

A. There was a bight in the middle of the rope, yes.

Q. How was the stern of the "Helene," in any way *weight* down on the end of that line?

A. By the weight of her anchor-chain pulling her ahead, that's why.

(Testimony of J. F. Haglund.)

Q. Wasn't it holding the end of that line up?

A. I don't understand that question.

Q. Wasn't it holding the end of the line up rather than the [3264—2433] middle of the line?

A. Very little.

Q. Well, it did, didn't it? A. Very little.

Q. Can't you answer my question?

A. Very little; that's as near as I can answer.

Q. You say it is impossible for you to say?

A. To a foot it is impossible for me to say.

Q. That isn't my question.

A. A small part I have stated.

Mr. OLSON.—I ask the Court to instruct the witness to answer the question whether or not it was held up.

A. Very little; whether it was an inch or a foot I am not able to state.

Q. I asked whether it was held up at all?

A. Maybe not held up at all.

Q. Now, then, Captain, was the "Helene's" line, the bight of the "Helene's" line, at any time, floating or on the surface of the water between the "Celtic Chief" and the "Helene"?

A. It might have been touching the water at times.

Q. Are you prepared to say that it was not, at any time, on the surface of the water?

A. I am prepared to state so, yes.

Q. And it never was?

A. Never? I didn't say so.

Q. I'm asking you if you are prepared to say that it was not at any time?

A. I am not prepared to say. I say that it did—

(Testimony of J. F. Haglund.)

Q. I'm not asking that; that's all I want.

Mr. WARREN.—I ask, your Honor, that the witness be allowed to finish that answer.

A. I want to state to the Court the "Helene's" line was at the "Helene" end only six feet out of the water and at the other end there was twenty or perhaps more than twenty feet out of the water; that kind of formed a considerable [3265—2434] sag without touching the water on a smooth sea.

Q. Did you say it was only six feet above the surface of the water that it went into the "Helene"?

A. Practically about that.

Q. Only six? A. Between six and seven.

Q. Did it go over the stern?

A. Through a hawse-pipe through the stern.

Q. How far below? A. At the main deck line.

Q. How far below the line of the stern?

A. Four feet.

Q. How high is the stern of the "Helene" out of the water? A. Stern?

Q. Yes. A. About ten feet.

Q. That's all? A. From the deck only.

Q. That's all, is it? A. Approximately ten feet.

Q. It wouldn't be more than that? A. No.

Q. Have you any—are you prepared to say, Captain Haglund, that the line of the "Helene" was out of the water even in the middle where the bight was most of the time?

A. I do; I'm prepared to state so.

Q. And that was a twelve-inch manilla hawser?

A. A twelve-inch manilla hawser; a sample lying on the table.

(Testimony of J. F. Haglund.)

Q. Was that true on Wednesday night just prior to the "Celtic Chief's" floating?

A. So far as I know.

Q. And that line did not part?

A. It did not part.

Q. Even though it had deteriorated? I understand you said it had?

A. I didn't see that line in the middle at all times Wednesday night.

Q. What about the anchor-chains of the "Helene"—did they hang in a bight as far as you observed? [3266—2435]

A. As far as I observed it was in a certain bight. It is impossible to tighten a chain. It doesn't matter how much strain you put on it.

Q. Did the bow of the "Helene" hold the end of the anchor-chain up or did it have a tendency to weigh it further down?

A. It undoubtedly weighed it down in the swells.

Q. It had the tendency to help to make the end of that anchor-chain downward?

A. Certainly. Very often you see the chains drag four, five, six, ten feet.

Q. What was it that kept that anchor-chain above sea level?

A. The buoyancy of that ship and strain that was put on it.

Q. The end of that anchor-chain wouldn't have remained above sea level if it hadn't been that the "Helene" kept it up? A. Certainly not.

Q. And the same is true of the hawser, attached to the "Helene," is that not true?

(Testimony of J. F. Haglund.)

A. If it hadn't been fast to the "Helene," if the end—

Q. It would have gone down into the water?

A. Certainly would.

Q. So that the stern of the "Helene" kept the end of the hawser up at the stern of the "Helene" and the bow of the "Helene" kept the anchor-chain out of the water up at her bow?

A. That is true, yes.

Q. So that the "Helene," then, being buoyant in the middle of this continuous line from the "Celtic Chief" to the anchor, kept the end of the hawser up farther out of the water, and the anchor-chain up out of the water, whereas, if the anchor-chain and the line had been fastened together the end, ends would have been off the surface of the water, wouldn't they?

A. The weight of that chain would have dragged the hawser down in the water.

Q. So that the "Helene," then, instead of weighing down on those [3267—2436] lines, tending to shove them down, had the tendency to hold them up, isn't that so?

A. A tendency to hold them up, yes.

Q. Now, then, Captain Haglund, if the anchor-chain and the hawser of the "Helene" had had a combined length long enough so that they could have been joined together, and if they had been hove taut so that they had maintained a straight line from the anchor to the "Celtic Chief," isn't it true that at the point where you have drawn the "Helene" on this diagram which is marked "Libellee's Exhibit

(Testimony of J. F. Haglund.)

#8," that straight line would have run below the water line and underneath the position of the "Helene," isn't that so?

A. Will you repeat that question, please?

(Question read.)

A. No.

Q. Captain Haglund, does the red line on this diagram represent a straight line from the "Helene" anchor position to the stern of the "Celtic Chief" where the "Helene's" line was made fast to her approximately?

A. Well, it does in a certain way, whether that is the scale or not I couldn't tell you.

Q. Haven't you drawn this to scale by means of a ruler which you had here?

A. Very roughly. I couldn't say whether it was a scale or not.

Q. You did it by a scale of one hundred feet to the inch? A. Supposed to be.

Q. And you did it as accurately as you could with an ordinary ruler?

A. So accurate as I could with that ruler? I think so.

Q. Now, then, Captain Haglund, if that is approximately a correct drawing, it is true that that line from the "Helene's" anchor to the "Celtic Chief's" stern would have run underneath the position of the "Helene"?

A. Apparently, according to that scale. [3268—2437]

Q. What reason have you for saying it would not?

A. I don't think it would.

(Testimony of J. F. Haglund.)

Q. Do you think so now?

A. I don't know whether that scale is correct.

Q. Do you think so now? A. I don't know.

Q. You think that's incorrect, that scale we used?

A. I don't say so. So near as I know that rule that I worked with is correct.

Mr. OLSON.—That's all that I have as to this witness.

Wednesday, November 8, 1911.

Mr. OLSON.—You have no recross, have you?

Mr. WEAVER.—No, I have none.

Mr. OLSON.—As I understand, you are finished with Captain Haglund.

Mr. WARREN.—Yes.

Recess.

Mr. OLSON.—I'm prepared to make some admissions requested by counsel, counsel of both libellants, of all of the libellants, with reference to the marbles and liquor composing a part of the cargo of the "Celtic Chief," as follows:

That the total value of that part of the cargo, marbles and liquor, in Honolulu at the time of the salvage operations, was \$3,001.44; furthermore, that this sum of \$3,001.44 is made up as follows: Value of marbles, \$75.84 and the balance being the value of the liquor.

Now, at the request of counsel for the Inter-Island Steam Navigation Company, I am prepared to admit the following facts which I, upon investigation, am convinced are true and can be easily shown:

That the complement of the "Mauna Kea" at the time of the salvage operations was sixty men and

(Testimony of J. F. Haglund.)

her master; that of the [3269—2438] “Helene,” thirty-one men and her master; that of the “Mikahala,” thirty-five men and her master; that of the “Likelike,” twenty-eight men and her master; and further, that the number of stevedores employed by the Inter-Island Steam Navigation Company in connection with the “Celtic Chief” operations, the compensation paid to whom has already been shown in evidence, was one hundred and thirty-four men.

Mr. WEAVER.—The Miller Salvage Company makes the same admission in regard to the details given.

Mr. OLSON.—I am now prepared to admit, at the requestion of counsel for the Matson Navigation Company, the following facts which I, upon investigation, have found to be true and am convinced can be easily shown in evidence, namely:

That the value of the “Intrepid” at the time of the salvage operations in question was \$30,000.00; that her indicated horse-power was 331; her gross tonnage, 123; her length, 85.5 feet; her breadth, 21.2 feet; her depth, 10.3 feet; and that her complement was 11 men and McAllister who was acting as her master.

Mr. WEAVER.—The Miller Salvage Company makes the same admission.

[Testimony of A. Lewis, Jr., for Libelants.]

Direct examination of A. LEWIS, Jr., a witness called on behalf of libellants, and sworn.

Mr. WARREN.—Q. Mr. Lewis, were you present at the operations connected with the salvage of the “Celtic Chief” on the night of Wednesday, Decem-

(Testimony of A. Lewis, Jr.)

ber 8, that being the night she came off, 1909?

A. I was.

Q. What time did you go out that night?

A. I went out in the early part of the evening, arriving on board the "Mikahala" about nine-fifteen.

[3270—2439]

Q. And at that time did you observe the "Arcona"?

A. Shortly after I arrived on board I observed the "Arcona."

Q. How far from the "Mikahala" was the "Arcona" at that time, approximately?

A. I can give you the approximate distance only. To the best of my recollection, in the neighborhood of 150 or 175 feet.

Q. And describe her position further with respect to the "Mikahala."

A. The "Mikahala" when I arrived on board had her bow pointed seaward; the "Arcona" was then on her starboard side. To the best of my recollection, the stern of the "Arcona" would be about on a line with the bow of the "Mikahala," the "Arcona" being on the starboard side of the "Mikahala," the "Arcona" facing, having her bow facing seaward.

Q. Did you, at that time, observe any lines from the "Arcona" to the "Celtic Chief"? A. I did.

Q. Where?

A. I could see a line rather indistinctly from the, leading north from the stern on the port side of the "Arcona," that line to the best of my recollection running down the side of the "Arcona" into the water.

(Testimony of A. Lewis, Jr.)

Q. About how great a distance between the "Arcona" itself and the point where the line went into the water?

A. I couldn't give you that in exact number of feet, but the line—I perhaps can better describe it by saying that the line as it entered the water did not make a very acute angle. I should judge that it was in the neighborhood somewhat—oh, anywhere from along about thirty feet.

Q. Thirty?

A. Thirty feet from where it left the vessel's side.

Q. To where it hit the water?

A. To where it hit the water. The line approached slightly the perpendicular, more the perpendicular than the acute.

Q. How many lines at the stern of the "Arcona" would you state?

A. I saw one, to the best of my recollection, the only line that [3271—2440] I could see.

Q. Now, could you observe the "Arcona" line at the "Celtic Chief" end? A. I could.

Q. What time of the evening is covered by your last answer, last two answers?

A. The time of the evening to which I refer would be, or rather is, from nine-fifteen P. M. until ten P. M.

Q. Now, will you go on? During that interval tell us if you saw these lines at the "Celtic Chief" end.

A. I saw during this same period of time, that is, from nine-fifteen to ten-fifteen, I saw rather indistinctly a line which I took to be the "Arcona's" line

(Testimony of A. Lewis, Jr.)

because I knew the "Arcona's" line was a wire approaching and leading up to the starboard side near the stern of the "Celtic Chief," the "Celtic Chief's" bow being pointed shoreward, inshore.

Q. How frequently did you observe the line of the "Arcona" prior to ten-fifteen? A. Ten o'clock.

Q. Ten o'clock.

A. Oh, I should say at least four or five times.

Q. And about what intervals?

A. Entirely during that period, between nine-fifteen or shortly after nine-fifteen and ten.

Q. Did you, at any time, observe any change in them? A. I did not.

Q. Do you know whether or not there was any change?

A. I was seated, I can answer that while I was seated in a chair on the deck of the "Mikahala" for a portion of the time between nine-fifteen and ten o'clock and I looked at those lines and I should say that I know pretty well that there was no change in those lines between nine-fifteen and ten o'clock.

Q. At ten o'clock what did you do?

A. At ten o'clock I spoke to one of the stewards. I don't know that he is a steward, one of the seamen or a steward on board of [3272—2441] the "Mikahala," and told him I was going to lie down for awhile and told him to awaken me or call me along about quarter-past eleven or half-past eleven.

Q. What did you do?

A. After talking to the steward I then went to one of the berths on the "Mikahala" and lay down.

Q. When did you next come on deck?

(Testimony of A. Lewis, Jr.)

A. Between quarter-past eleven and eleven-thirty P. M. of the same evening.

Q. Did you, at that time, observe the "Arcona"?

A. I did and at that particular time I had a better opportunity of observing the "Arcona."

Q. Why?

A. There was a search-light on at that time.

Q. Had you seen that search-light before you come out, before you went in at ten o'clock?

A. Before I went in at ten o'clock there was no search-light then.

Q. Describe the position of the "Arcona" as you saw it then.

A. There was absolutely no change in the "Arcona" from the time that I came out between quarter-past nine and eleven-thirty and when I retired at ten o'clock.

Q. Describe her lines at that time as far as you saw them.

A. The lines were exactly in the same position as they were and which I had noticed prior to my retiring, that is, the line leading down over the side of the "Arcona" went into the water near the perpendicular and coming out on the other side, on the starboard side of the "Celtic Chief" also entered, came out of the water and approached the side near the perpendicular.

Q. How many lines in all could you see at the stern of the "Celtic Chief"?

A. First, beginning with the starboard side I saw the two lines of the "Mikahala."

Q. I mean at the "Arcona."

(Testimony of A. Lewis, Jr.)

A. Oh, at the "Arcona," I beg your pardon. I could see only the one line. Now, as I recollect it, that line which led from the port side of the "Arcona."

Q. Now, could you see any lines then at the stern of the "Celtic [3273—2442] Chief"?

A. I did.

Q. Will you tell us what lines you saw there?

A. Beginning from the starboard side I saw the two lines of the "Mikahala." I saw the wire of the "Arcona" and then there was a very large, I won't say very large, but there was a hawser hanging over the stern of the "Arcona," I think, near the—

Q. "Celtic Chief"?

A. "Celtic Chief," near the starboard side, hanging directly perpendicular down into the water, giving me the impression that it was simply hanging there leading nowhere. Then I could see indistinctly one line over toward the port side, but I'm not sure about two but I can remember at least one line over toward the port side and to the stern of the "Celtic Chief."

Q. Now, referring to the line you have mentioned as the "Arcona" line, describe the position of that as you saw it.

Mr. OLSON.—Object to the question on the ground it has already been asked and answered.

Q. At that time after eleven-fifteen.

Mr. OLSON.—Same objection, if the Court please.

The COURT.—Objection overruled.

A. The line was exactly the same position as I first noticed it hanging, running from the starboard side of the "Arcona" near the stern.

(Testimony of A. Lewis, Jr.)

Q. Of the "Arcona"?

A. Of the "Celtic Chief" down into the water; more nearly, not exactly perpendicular.

Q. About how much?

Mr. OLSON.—Let him finish.

A. Not exactly perpendicular but making more of a perpendicular, that is the angle, as it entered the water, approached nearer the perpendicular than a more acute angle.

Q. About how much of the line of the "Arcona" was out of the water at the "Celtic Chief" end according to your best judgment?

A. I wouldn't want to give that in the exact number of feet. [3274—2443]

Q. Never mind the exact; as near as you can estimate.

A. Oh, somewhere between say 40 and 60 feet; that is, beginning from where it entered the side.

Q. When did you first observe any motion on the part of the "Celtic Chief" that night, motion of any kind.

A. In the neighborhood of a quarter to twelve to the best of my recollection.

Q. Describe the motion as you saw it.

A. Well, the vessel seemed to show a little bit of life prior to the time, prior to that time. She was simply practically motionless, was lying on the reef and then it appeared to me that about that time there was a trifle more swell; the swell was not very high, just a little bit of a swell, seemed to be increasing just a trifle and there was simply a slight movement on board the "Celtic Chief." I then tried to

(Testimony of A. Lewis, Jr.)

line up the stanchion on the stern of the "Mikahala" with a light on shore to see whether the vessel was moving seaward at all. A few minutes after that it seemed to me that there was a perceptible motion seaward.

Q. Now, describe the seaward motion as you observed it from that time on.

A. From that time on it seemed to me that the vessel became a trifle more lively. Lining up the stanchion with a light on shore, the vessel would apparently go seaward and then stick and remain there for a short period of time and then later on move a trifle more and then stick until the swell increasing a trifle she began to wobble about more, and along somewhere in the neighborhood of between twelve and twelve-twenty, twelve twenty-five or twelve-fifteen, along about that time, with a very perceptible motion, in fact, quite a reasonably quick motion, the vessel left the reef.

Q. Now, prior to the "Celtic Chief" coming off the reef, how frequently after eleven-fifteen while the search-light was on, did you observe the "Arcona" lines at the stern of the "Arcona"?

Mr. OLSON.—Object to the question on the ground that it assumes [3275—2444] that the witness observed lines of the "Arcona."

Q. How frequently did you observe any line at the stern of the "Arcona"?

A. At the stern of the "Arcona," I should say that I observed it once or twice. I saw no particular change. My attention, however, after twelve-fifteen, after say between eleven-fifteen and eleven-

(Testimony of A. Lewis, Jr.)

twenty, was more directly directed toward the stern of the "Celtic Chief." However, I did observe the lines at the stern of the "Arcona." I saw no change.

Q. Do you know whether or not there was any change?

Mr. OLSON.—I object on the ground that the witness has fully covered that in his last answer.

Mr. WARREN.—I withdraw that question and ask you after eleven-fifteen that night while the "Celtic Chief" was on, how frequently did you observe the line or lines of the "Arcona" at the "Celtic Chief" end prior to the ship coming off?

A. I can answer that in this way: I was out there to see what the various vessels who were engaged in the "Celtic Chief" operations were doing. I have had some little experience in the trying of salvage cases, being the attorney for the Inter-Island Steam Navigation Co. in a number of its salvage operations I was, at that time, counsel for the Inter-Island Steam Navigation Co. I directed my attention to the lines of the "Arcona" as well as the lines of the other salving vessels. I occasionally looked at the lines of the "Arcona" to see what she was doing. I looked at those lines, that line, as it approached the "Celtic Chief," quite frequently during that period.

Mr. WARREN.—I'd like to ask your Honor to have stricken from the record, the answer as not responsive.

Mr. OLSON.—In view of the fact that counsel is anxious to have this part of the witness' answer stricken from the record, and in view of the fact

(Testimony of A. Lewis, Jr.)

that I shall later bring this matter out, I consent to the motion.

Mr. WARREN.—Then I withdraw the motion.
[3276—2445]

The COURT.—The Court will allow the matter to stand.

A. I gave the answer in the form in which I did because counsel seemed to wish to retain among themselves some reason for my expressing my knowledge of the conditions as they existed out there and I wished to place upon the record the reasons why I happened to make these particular observations.

Q. Now, will you tell us, Mr. Lewis, how frequently you did observe the lines of the "Arcona" at the "Celtic Chief"?

A. Quite frequently. I should say very frequently during that period.

Q. Did you, at any time, notice any change of their positions prior to the ship coming off?

A. I did not.

Mr. OLSON.—I object very decidedly to counsel assuming that this witness saw more than one line of the "Arcona."

Q. How frequently did you observe that one line at the "Celtic Chief" end?

A. Quite frequently; in fact, very frequently.

Q. And do you know whether or not there was any change in the position of that line?

A. There was no change.

Q. In what direction did the "Celtic Chief" move in coming off the reef?

(Testimony of A. Lewis, Jr.)

A. As she left the reef she moved directly toward, directly seaward toward the stern of the German cruiser, "Arcona."

Q. How near did she approach the stern of the "Arcona" and in what way?

A. As I have heretofore stated, when she left the reef she was headed directly toward the stern of the "Arcona," the "Mikahala" had a line attached to the "Arcona."

Mr. WARREN.—To the "Celtic Chief."

A. To the "Celtic Chief," and as the "Celtic Chief" approached the "Arcona" the "Mikahala" by means of that line pulled the "Celtic Chief" to the port side of the "Arcona." The nearest that any part of the "Celtic Chief" approached that of the "Arcona," I should judge, [3277—2446] would be in the neighborhood of 50 feet. The "Mikahala" continued pulling on her line until she had pulled the "Celtic Chief" into a position where the "Celtic Chief" had passed the stern of the "Arcona"; that is, the stern of the "Celtic Chief" had passed the stern of the "Arcona." The "Arcona's" stern was inshore as compared to the stern of the "Celtic Chief."

Mr. OLSON.—The bow of the "Celtic Chief"?

A. I wouldn't want to say that it was not far.

Mr. WARREN.—Where was the "Mikahala" when you made this observation, in what direction from the "Celtic Chief"?

A. She was naturally off shore, pointed seaward, towing the "Celtic Chief" seaward.

Q. I'm not talking about the "Arcona."

(Testimony of A. Lewis, Jr.)

A. No, her hawser was taut, the "Celtic Chief" was, until the "Celtic Chief" had got into position, until she was toward the Ewa side of the "Mikahala." In other words, the "Mikahala" in pulling veered very decidedly to her port side and headed out to port in fact, until the "Celtic Chief" got into a position so that she was not exactly, but almost exactly, between the "Mikahala" and the "Arcona."

Q. When did you first observe any movement of the "Arcona"?

A. I'm not sure as to the hour but about the time that the "Celtic Chief" had occupied the position opposite and passed the stern of the "Arcona."

Mr. WARREN.—Cross-examine.

Cross-examination of A. LEWIS, JR., on Behalf of Libelee.

Mr. OLSON.—Q. Mr. Lewis, you were the attorney directly in charge of the institution of the suit by the Inter-Island Steam Navigation Co. in this case, were you not?

A. I was. Very shortly after that time I retired from the practice of law. [3278—2447]

Q. You were also the attorney directly in charge of the institution of the suit on behalf of the Matson Navigation Co. in this case? A. I was.

Q. You prepared the libel in each of those cases, did you? A. I did.

Q. And you were attending at the "Celtic Chief" operations in the way that you have described as the attorney of the Inter-Island Steam Navigation Co.?

A. I was.

(Testimony of A. Lewis, Jr.)

Q. For the purpose of preparing yourself for a possible suit such as was begun by you on its behalf later? A. I was.

Q. In the early part of this litigation, you, as the attorney of the Inter-Island Steam Navigation Co. and Matson Navigation Co. appeared in the taking of the depositions of the, of certain officers of the "Celtic Chief," did you not? A. I did.

Q. And it was only after the suit had been begun and some of the evidence taken in the form of depositions that you retired as counsel for these two libellants? A. That is true.

Q. The reason for your retiring as counsel for these companies was because of your retiring from the active practice of law in Honolulu, in order to undertake a business life as distinguished from a professionally life; isn't that true?

A. That is correct.

Q. Have you any connection whatever with the Inter-Island Steam Navigation Co. at the present time? A. I have.

Q. What is that connection?

A. I am a stockholder.

Q. Will you state how large a stockholder you are? A. I think I have thirty shares.

Q. And what is the par value of those shares? Par value? [3279—2448]

A. \$100.00 per share. A capitalization of two hundred—a quarter of millions.

Q. Do you represent any of the other shareholders of the Inter-Island Steam Navigation Co. at the

(Testimony of A. Lewis, Jr.)

present time? A. I do.

Q. Will you state how many shares you represent in a representative capacity?

A. Oh, somewhere between 200 and 250.

Q. Between 200 and 250 shares? A. Yes.

Q. The same par value as those that you own yourself? A. Yes.

Q. You are the managing officer, are you, of the Bank of Hawaii, Ltd.?

A. I am vice-president and manager of the Bank of Hawaii.

Q. Is that bank in any way interested in the Inter-Island Steam Navigation Co.?

A. I believe that the Bank of Hawaii, as well as some of the other banks in Honolulu have banking interests with the Inter-Island Steam Navigation Co.

Q. In other words, the Inter-Island Steam Navigation Co. carries an account in your bank. I do not wish to appear inquisitive, but to what extent? Is it a trifling account?

A. I can answer that question by saying that I consider the Inter-Island Steam Navigation Co. a ——— of the Bank of Hawaii.

Q. One of your important patrons?

A. I should say so.

Q. Is the Bank of Hawaii in any other way interested in the Inter-Island Steam Navigation Co. through the ownership of stock of that company or in holding collateral, as collateral shares of stock?

A. According to our law here, we can only take stock in payment of debt and after a limited period

(Testimony of A. Lewis, Jr.)

of time shall be compelled to sell that stock.

Q. Do you have any within that limitation?

A. We have no stock, hold no stock in the Inter-Island Steam [3280—2449] Navigation Co.

Q. Do you hold any as collateral security?

A. I think we hold a few shares of stock as collateral; nothing which would in any way influence—

Q. That is not the question and I ask to strike on the ground that it is not responsive to the question. I further add as a ground for my motion that it is a conclusion of the witness.

The COURT.—The motion is granted.

Q. Are you connected with any other person in a representative, representative or any other way, in a representative capacity or otherwise that is interested in the Inter-Island Steam Navigation Co., Ltd.?

A. I don't think I can answer the question because I don't quite understand it, Mr. Olson.

Q. I mean to say, are you as an officer or in any other representative capacity and for any other concern than the Bank of Hawaii and other than the representative that you have testified to already, connected with any other concern that is interested in the Inter-Island Steam Navigation Co.?

A. At the present time, not to my knowledge. It may be, but not as far as I know. I think I have covered the ground of my representation that I have heretofore testified about.

Q. Does your family own any stock?

A. The stock which my family owns in connection with the Inter-Island Navigation Co. has been covered in the answer that I heretofore gave to you that

(Testimony of A. Lewis, Jr.)

I represented a certain number of shares in a representative capacity.

Q. Do you represent any other holder of the company outside of your family? A. I do.

Mr. WARREN.—Object to the question as asked and answered.

The COURT.—The objection is overruled.

A. I do, but it has already been covered in my previous answer.

Q. Now, you stated that you represented between 200 and 250 shares of the capital stock of the Inter-Island Steam Navigation Co. [3281—2450] Will you state what proportion of that is owned by your family?

A. I don't know what I represent.

Q. I'm sorry to go into these personal matters, but at the same time I am obliged to do so, Mr. Lewis.

A. I am perfectly willing to tell you.

Q. Approximately if you can't give it exactly.

A. I should say between myself and my family, in the neighborhood of 130 shares.

Q. You were a member of the law firm of Smith and Lewis while you were acting for the Matson Navigation Co. and the Inter-Island Steam Navigation Co. in the institution of this suit, were you not?

A. Yes.

Q. You were a partner in that firm? A. I was.

Q. Will you state whether or not you have any pecuniary interest in the compensation to be paid for the services rendered to those two libellants in connection with this suit?

(Testimony of A. Lewis, Jr.)

A. I really couldn't say at this time, but my recollection is that I don't think I have. I'd really want to refer to the old books of Smith & Lewis to ascertain that fact, but if I do have any interest in it, it would be a slight interest.

Q. It would be a proportion of the fee, would it not, to be paid if that has not yet been paid, if that has not yet been settled between you and your partner, Mr. Smith, who is still one of the counsel for the libellants in this case?

A. It would be, but I cannot say in the final settlement I have had, we have settled this. I am inclined to think I have, but I'd rather say I'm not sure.

Q. You remember, do you not, Mr. Lewis, that it was a cloudy night—in fact, so cloudy that neither the moon if there was a moon at that time or the stars were shining?

A. I should say that it was a moonlit night, but it was not a bright night. [3282—2451]

Q. Don't you think that the sky was actually cloudy?

A. I think it was a little hazy. I don't think the sky was entirely overcast.

Q. Don't you remember that it was a sultry night?

A. It was a sultry night; typical southerly weather here.

Q. There was scarcely any breeze blowing?

A. I didn't notice any breeze; in fact, very little, if any.

Q. You've testified to a swell that was running;

(Testimony of A. Lewis, Jr.)

did you observe that swell from the time that you first went out?

A. I didn't notice any when I first went out; not in that particular locality. Up closer to the "Arcona" there is more or less of a ground swell.

Q. "Celtic Chief," you mean?

A. "Celtic Chief," but out where the "Mikahala" lay there wasn't much of a swell. I might say it was the beginning of the swell always more or less running out there.

Q. That is, there was a slight disturbance of the water but it didn't amount to anything.

A. That is my recollection.

Q. Was it a swell that was especially noticeable even up around the "Celtic Chief"?

A. When I first went out I don't believe the swell was what you would call a large swell or even a moderate swell along the "Celtic Chief" when I first went out there about nine o'clock.

Q. Now, you've testified that after, sometime after eleven o'clock, I believe you said about eleven forty-five, you first began to notice that the "Celtic Chief" began to be more lively and from that time onward this was noticeable; is that correct?

A. That's correct.

Q. And you also observed that there was some little increase in the size of these swells; is that correct or did I misunderstand you?

A. That is correct.

Q. When you say there was a little increase in the size of the swells, do you mean to say that prior to that time when they [3283—2452] would not

(Testimony of A. Lewis, Jr.)

have been moderate swells that they had now become moderate swells?

A. To give it more precisely, I should say the swell was a little past moderate.

Q. They weren't breaking around the "Celtic Chief"?

A. There was—no, it wouldn't all spray on the counter or the starboard quarter. Further on the "Celtic Chief" there was a good swell.

Q. You remember, do you not, the lightering of cargo had ceased about eleven-thirty?

Mr. WARREN.—I object to that as improper cross-examination, your Honor.

The COURT.—I overrule the objection.

A. I have no definite knowledge as to when the lightering ceased.

Q. Well, then, I'll ask you if you do not remember that it had ceased approximately three-quarters of an hour or thereabouts prior to the floating of the "Celtic Chief"?

Mr. WARREN.—Same objection.

The COURT.—Same ruling.

A. I can answer your question by saying that I didn't see any lighterage going on, didn't notice any lighterage going on.

Q. During that period of time?

A. After half-past eleven, I would say.

Q. Comparing the bow of the "Arcona" with the bow of the "Mikahala," will you state which way, if there was any difference at all, the "Arcona's" bow was pointing prior to the "Celtic Chief" beginning to come off?

(Testimony of A. Lewis, Jr.)

A. To answer that question, Mr. Olson, I should have to ask you to definitely fix the time. Prior might mean any time.

Q. When did the "Mikahala" first vary its position from what it had at the time that you came aboard her until about nine o'clock or shortly thereafter?

A. I came on board at nine-fifteen and up to ten o'clock, the time I retired, I didn't remember that the [3284—2453] "Mikahala" changed her position up to that time. I think I rose from the berth along about, as I say, somewhere between eleven-fifteen and eleven-thirty and I didn't notice particularly whether the "Mikahala" had changed her position at that time. She may have.

Q. It wasn't so material a change that it brought itself to your attention at any rate if there was a change?

A. Well, she could have moved. For instance, she could have moved several degrees one way or the other without my particularly noticing it because I remember very well when I got on deck my attention was directly wholly to the ship, to the "Celtic Chief." When I had retired there was no search-light playing and when I arrived upon deck this search-light was playing and my attention was first directed to the "Celtic Chief" and whether or not the "Mikahala" had changed her position, I would not say one way or the other.

Q. It would not be more than the change that you might ordinarily expect from the varying back and forth of the towing steamer under the influence of

(Testimony of A. Lewis, Jr.)

her propeller? A. It might have been.

Q. Now, then, with reference to the position of the "Mikahala" as she lay from nine-fifteen until the time that you retired, which you say was about ten o'clock, how was the "Arcona" pointing as compared to the direction in which the "Mikahala" was pointing?

A. To the best of my recollection, the "Arcona" was pointed directly seaward.

Q. If a line were drawn through the "Arcona" on to the "Celtic Chief," the "Mikahala" would be a trifle to the starboard of the "Celtic Chief"?

A. To the starboard of the "Celtic Chief" and to the port of the "Arcona."

Q. So that the angle made by two lines extended through the two vessels would show the bows of the two vessels farther apart than the sterns of the two vessels? [3285—2454] A. I should say so.

Q. That is before, that is between nine-fifteen and ten. And except for any change of the "Mikahala" one way or the other, the same would be true, wouldn't it, until the "Mikahala" began to veer off to the side in order to pull the "Celtic Chief" clear of the "Arcona," isn't that so?

A. I can't testify as to that. As I say, when I came on board when I rose from the bunk at eleven-fifteen, I can't testify as to how the "Mikahala" was headed with reference to how she was headed before that time, whether there had been any change. I wouldn't want to say on way or the other.

Q. Where in the superstructure of the "Arcona" was the search-light they used that night?

A. I don't think, as a matter of fact, I could an-

(Testimony of A. Lewis, Jr.)

swer that question, and at the present time I cannot, it's passed out of my mind.

Q. You can't even remember whether it was the stern of the vessel or at the bow of the vessel or amidship?

A. It wasn't at the bow of the vessel approximately; it was out of the way and somewhere between port and starboard sides, but just now as to fixing that light in a point between the bow and the stern I confess I am unable to do so.

Q. You remember, do you not, that the German vessel was a cruiser? A. I do.

Q. And like the ordinary cruiser has a bridge that rises up amidships?

A. I should say so in the natural order of events there was a search-light on the bridge.

Q. After eleven-thirty it sufficiently lighted up the situation so that you were able to see to better advantage the lines which passed from the "Arcona's" stern down alongside of the vessel into the water?

A. If you will let me answer that question by comparison I think I can get at what you are after. When I arrived there at nine-fifteen there were a number of lights around; there were lights aboard the cruiser and lights aboard [3286—2455] "Mikahala" and ordinary lights around the "Arcona," the "Celtic Chief," they gave, they showed more or less light. When the search-light was turned on, my recollection is that that light was thrown right straight at the "Celtic Chief." You could see her masts and see, in fact, pretty much the whole of the "Celtic Chief." It was not directed down. It seemed to be directed straight out right at the "Cel-

(Testimony of A. Lewis, Jr.)

tic Chief''; some of the rays running off at different angles permitted me to see to better advantage the lines as they left the "Arcona" and the lines, as it, the lines as they came aboard the "Celtic Chief."

Q. Isn't it a fact, Mr. Lewis, that after that search-light came on it was more difficult to see the line passing from the stern of the "Arcona" down into the water than it was prior thereto?

A. Not to my knowledge.

Q. The contrast did not accentuate the darkness in that vicinity?

A. The shaft of light as it left the search-light on board the "Arcona," to my knowledge, did not approach the water immediately about the "Arcona" to such an extent that it prevented me from seeing the water immediately around the stern of the "Arcona."

Q. And your recollection is that it lighted up rather than accentuated the darkness?

A. So far as that portion is concerned, immediately about the stern of the "Arcona."

Q. You are perfectly clear about that so that there is no question about that in your own mind?

A. That's my present recollection.

Q. What kind of a line was this line that you observed used by the "Arcona"?

A. As near as I could judge, it was wire, a wire hawser.

Q. You could see that, could you, from the "Mikahala"?

A. As I have heretofore stated, when I first came aboard I had to look more closely to distinguish it. It was more or less indistinct as I have heretofore

(Testimony of A. Lewis, Jr.)

testified. Between nine-fifteen [3287—2456] and ten o'clock—I would not want to testify definitely—I think I could distinguish another of the "Arcona's" lines as it approached the "Celtic Chief." That's why I qualified my answer by saying that I could not testify definitely as to both. I thought I saw the other.

Q. Do you remember where the line on the star-board side of the "Celtic Chief" entered the "Celtic Chief"? At what part of the vessel?

A. Well, as near as I can recollect it seemed to run along, it seemed to be over the "Mikahala's" line and entered the "Celtic Chief" up over the side.

Q. About amidships?

A. Well, at least—I wouldn't want to testify definitely—it was at least, it was not immediately on the stern, it would be more likely amidships where it finally entered. I wouldn't want to testify definitely. I should say it entered some chock or entered an aperture pretty well off the stern.

Q. You observed the "Celtic Chief" pretty carefully and know approximately her length?

A. I did at one time. I couldn't tell you now.

Q. You know it was over 250 feet?

A. I should say she was about that.

Q. Then the point where this line entered the bulwark of the "Celtic Chief" would be at least 125 or 20 feet forward of the stern of the "Celtic Chief"?

A. As I remember the "Celtic Chief," she was higher at the stern, and if you take a point at the extreme overhand of the vessel to where I should say the wire entered the side of the vessel, it would be at least the distance that you mentioned.

(Testimony of A. Lewis, Jr.)

Q. Now, the point at which you think it struck the water was, therefore, forward also of the stern of the vessel; isn't that so?

A. At the angle at which I observed that it would be difficult for me to say whether the point at which that line entered the water was inshore from the extreme overhand or within that proximity or whether it was little [3288—2457] farther out from the extreme part of the overhand and where the vessel you might say left the water.

Q. Then when you saw the line of the "Arcona" on the other side, which you said a few moments ago, which you thought you were able to distinguish, if you saw that looking from the angle at which the "Mikahala" was pulling at the "Celtic Chief," it must have been true, if that was the "Arcona's" line, that it entered the water at a point farther out to sea than the other?

A. That's why I say that I would not say that I did see the line.

Q. But if you did see it that that is true?

A. I doubt very much whether I saw it.

Q. I'd like you to answer the question. If it was a line of the "Arcona," then it entered the water at a point further seaward than the other?

A. I testified definitely that I did not see the "Arcona's" line as it approached the "Celtic Chief," enter the water.

Q. And you couldn't see it unless it entered the water at a point further seaward than the other one?

A. Yes.

Q. You spoke of a wire hanging from the stern of

(Testimony of A. Lewis, Jr.)

the "Arcona," of the "Celtic Chief" entering the water directly over her stern?

A. I said a hawser, not a wire.

Q. Oh, a hawser? A. Manilla hawser.

Q. Was that a manilla hawser that looked something like these samples that we have in this suit? I am now referring to Libellants' Exhibit "P" and Libellants' Exhibit "O."

A. It was a good-sized hawser.

Q. And that's all you saw of it? A. Yes.

Q. Didn't you see anything else in connection with it? A. Not that I remember.

Q. Didn't see a wire line hanging down alongside of it? A. No, I did not. [3289—2458]

Q. Well, you were observing pretty carefully after the search-light came on, after you had taken your nap, the situation and you also observed this line, did you not? A. Which line?

Q. The line concerning which you have just been testifying.

A. Yes, my attention was particularly directed after 11:15 to that hawser hanging over the stern.

Q. And, of course, you could see in view of this light, you could see it very clearly? A. Yes.

Q. And there was no wire line attached to it as far as you could see?

A. I couldn't say that there was.

Q. So that if the Miller Salvage Co. had a line hanging over the stern of the "Celtic Chief" which consisted of a ten-inch manilla hawser together with a wire line in the shape of a preventer, about an inch or so in diameter, two pieces of it, running alongside

(Testimony of A. Lewis, Jr.)

of that manilla hawser, that would not be the hawser that you saw? A. I should say not.

Q. You didn't see a large wire line other than the "Arcona's" wire line running over the stern of the "Celtic Chief," did you, at any time?

A. Hanging over the stern, no.

Q. Did you see a large wire line of that kind that I have just described at any time in the course of the proceedings out there about the "Celtic Chief"?

A. I think I did.

Q. You think you did? A. Yes.

Q. When did you see that?

A. I noticed that along about the same time that I did the other.

Q. That would be when you first came up on deck?

A. When I first came on deck.

Q. That was about 11:15? A. Yes.

Q. And where was that?

A. Came around the stern.

Q. On which side of the "Celtic Chief"?

A. My recollection is now that that was nearer the end of the stern than the other.

Q. How was that line hanging with reference to the horizontal surface of the water?

A. My recollection of it is a little [3290—2459] more acute than the other.

Q. Little more acute than the manilla hawser?

A. Than the manilla hawser.

Q. Where was that line with reference to the manilla hawser?

A. It seemed to me that it was quite as I recollect it, quite a distance away from it. The manilla haw-

(Testimony of A. Lewis, Jr.)

ser was running down in a perpendicular. And this other was quite a way from it.

Q. Did you notice a shackle in that line?

A. I don't think I could testify that I noticed a shackle at that distance.

Q. About the time that the "Celtic Chief" was nearing its final—after it had been lively for some fifteen or twenty minutes or so, did you observe these two lines, this wire hawser and this manilla hawser concerning which you have just been testifying?

A. I think so.

Q. Was there any change that you observed in either of them?

A. No, I think they retained their respective positions.

Q. Did you observe the manilla hawser just prior to the floating of the "Celtic Chief"? A. Yes.

Q. When she finally came off? A. Yes.

Q. And it didn't change its position? A. No.

Q. And the same is true of the wire hawser?

A. No, the wire hawser entered the water just the same.

Q. Just the same?

A. There seemed to me to be no connection between the two.

Q. Were you watching the "Celtic Chief" pretty closely after she actually was afloat and was going toward the "Arcona"? A. Very much.

Q. What happened to those two lines, this manilla hawser and this wire line that you saw there?

[3291—2460]

A. From that time on my attention was directly centered upon the "Mikahala's" lines.

(Testimony of A. Lewis, Jr.)

Q. And you weren't paying any attention to the others? A. No, I didn't.

Q. Do you know where the—do you remember or could you determine by anything that you observed there that evening the direction of the "Arcona's" anchor-chain?

A. I can't give you any information at all on that scene of the operations. After eleven o'clock, for instance, when I arose, after eleven o'clock I didn't go up on the forward part of the vessel on the "Mikahala" and look at the anchor-chains of the "Arcona" or even the forward anchor of the "Mikahala."

Q. And not prior to that time? A. No, I didn't.

Q. I believe you testified that the "Mikahala's" position was such that her bow was practically in line with the end of the stern of the "Arcona," that is, when you came aboard of the "Mikahala" at 9:15 or thereabouts?

A. What I meant to convey was that if a line were drawn from the stern of the "Celtic Chief," I should say that the bow of the "Mikahala"—

Q. Of the "Mikahala"? You mean the "Arcona"?

A. The "Arcona," that that line would practically come near the bow of the "Mikahala," might be a trifle seaward of it; more likely to be seaward than landward.

Q. What was this liveliness that you observed about 11:45 on the part of the "Celtic Chief"? What did it consist of?

A. At first it was only just perceptible, that was all; I had been watching it very steadily when I first rose to see whether or not she was moving and then

(Testimony of A. Lewis, Jr.)

it seemed to me along about 12 o'clock that she seemed to move a little bit, shake and tremble. That was the first motion that I noticed. It was not a very perceptible motion. [3292—2461]

Q. It wasn't a motion from which you could detect that she was moving seaward any without reference to any landmark? A. No, I could not.

Q. Prior to that time she hadn't been bumping, as far as you could observe?

A. Not as far as I could observe.

Q. She was practically still?

A. There might have been a very slight, very, very slight movement with the swell, but practically none.

Q. That might have been due to the movement of the "Mikahala" herself, might it not?

A. That might have been due to the "Mikahala."

Q. What was this range light that you took for the purpose of making an observation whether or not she was moving?

A. It has passed from my memory.

Q. It was a light on shore?

A. It was a light on shore.

Q. Was it nearer a half a mile or farther?

A. It is passed from my memory.

Q. It wasn't a hundred yards?

A. Oh, no, it wasn't.

Q. It was a good distance away?

A. Far distance.

Q. Quarter of a mile at least?

A. I should say so.

Q. How did you use that and the stanchion as a range?

A. Well, I think I got—my recollection is I took

(Testimony of A. Lewis, Jr.)

some portion of the superstructure and the stanchion and the light. On that my memory isn't clear now as to whether I did that or got some other object on the shore behind the light.

Q. Now, judging from that, how much do you think the "Celtic Chief" moved the first time that you took the observation of her having moved some distance and then stopped again?

A. I could give absolutely no impression on that because the change of the light was so small that I couldn't give you any idea. [3293—2462]

Q. When you say it was so small, what do you mean by that? Do you mean that the variation between this, if it was a stanchion or some other object and the light, was so slight that you would not be able to tell how much it was? A. I could not.

Q. As a matter of fact, the change might have been due to the "Mikahala" herself?

A. I was about to say that if the "Mikahala" had shifted her position it would have produced the same result.

Q. By that you mean if she had shifted her position from side to side as well as forward?

A. Certainly. It was simply a surmise of mine that she was moving.

Q. The first actual movement that you are positive of is when she began rapidly to come off and moved toward the "Arcona"?

A. The best of my recollection is that at least when she, at least when there was a motion seaward which was perceptible by looking at some observation. Of course, that again might have been caused by the shaking of the "Mikahala's" position, but I should

(Testimony of A. Lewis, Jr.)

say at least one during that period of time I could say definitely she had moved, a movement of several feet away astern and she sure must have moved that time.

Q. How long was that before she finally floated?

A. Just a short time.

Q. Five or ten minutes?

A. Just about that, that period of time. You see this is sometime ago, Mr. Olson. My recollection of these matters isn't as good now as it was a year ago.

Q. When you prepared the libel, for example? Now, Mr. Lewis, the "Celtic Chief," according to your testimony, at the time that she had come alongside of the "Arcona's" stern, was, according to your judgment, about 50 feet from her? Am I right in that understanding of your testimony?

A. I should say that the nearest point on the "Arcona" to the nearest point on the "Celtic Chief" was a distance which was as near as 50 feet.

Q. How soon was it that the "Mikahala" began to draw the "Celtic [3294—2463] Chief" over to the starboard of the "Celtic Chief" after she had proceeded in this line toward the "Arcona"?

A. That is a very difficult question to answer both as to time and as to space, as to distance. Probably I can simply give you my impression as I have a picture before my mind's eye now. The "Celtic Chief" left the reef that night with a rapid motion when she left, straight out, and I should say that the whole of the vessel left the reef and started straight out before the pulling of the "Mikahala" had veered the "Celtic Chief" about to the port side of the "Arcona." However, after she had travelled a short

(Testimony of A. Lewis, Jr.)

distance or a reasonable distance from her berth on the reef, she then shook and twisted, or rather not, "and twisted," but she then just curved so that as we were going forward on the "Mikahala" we could see that the "Celtic Chief" was veering around and at one time you could look sort of—for a few seconds—sort of between the "Celtic Chief" and the "Arcona." That was just toward the end.

Q. Was the "Mikahala" at the time that the "Celtic Chief" came alongside of the stern of the "Arcona," pointing as much as at right angles to the "Arcona" at that time? A. In her final position?

Q. Before the line was cast off. Was it at right angles at the time the "Celtic Chief" came alongside the "Arcona"?

A. When she got alongside the angle was more acute. When she got her position, as far as we were concerned our line was going at right angles to that of the "Celtic Chief."

Q. I am not sure that I understand that. You mean to say she was already getting that position at the time the "Celtic Chief" had got near the stern?

A. Yes. It is difficult to give you the exact distance and to give you the exact time. As much as I'd like to, I can't do it. I just give you the picture as it appears to me now.

Q. Who else was with you on the "Mikahala" that evening aside [3295—2464] from the regular crew of the "Mikahala"? A. Mr. J. A. Dowsett.

Mr. WARREN.—J. M.

A. J. M. Dowsett, Mr. Kennedy, the manager of the Inter-Island and president, and I think Mr. G. N. Wilcox. These were the persons with me.

(Testimony of A. Lewis, Jr.)

Q. And all of these men are directly interested in the Inter-Island Steam Navigation Co. as directors?

A. I think the three gentlemen are directors.

Q. And all of them are stockholders?

A. To my knowledge as far as I know they are.

Q. And except for Mr. Kennedy, large stockholders?

Mr. WARREN.—I object to that as improper cross-examination.

A. I can simply say that as hearsay.

The COURT.—I allow the question.

A. I think we all know that pretty well.

Q. You don't know that Mr. Wilcox and Mr. Dowsett are large stockholders of the company?

A. I have never seen their certificates of stock with their names on them and I haven't seen the stock ledger, but I think it is pretty well known that both of those gentlemen are large stockholders of the Inter-Island.

Q. And you so understood at the time that you went on the "Mikahala" with them?

Mr. WARREN.—Same objection.

The COURT.—Same ruling.

A. I didn't understand that question.

Q. You understood that they were large stockholders?

A. I never had any understanding with them.

Q. You believed that they were?

A. The matter never entered my mind.

Q. You regarded them as such?

A. I didn't regard them at all as stockholders. The fact that those two men were large stock-

(Testimony of A. Lewis, Jr.)

holders never entered my mind. [3296—2465]

Q. At that time you knew that they were as much as you know now that they are large stockholders?

A. I have never heard of their parting with any holdings that they had.

Q. And this general knowledge that you have referred to existed at this time so that you were just as much aware of the fact that they were large stockholders as you are now? So that this ——— that you entered upon at that time was a company made up of persons so far as you knew all interested in the Inter-Island Navigation Co. and its affairs?

A. As far as I know, my attention wasn't directed to that particular point at all.

Q. That isn't the point. The point is, isn't it the fact that they were all men interested in the Inter-Island and its affairs?

A. I think I have already answered your question.

Mr. WARREN.—I object to the question as asked and answered, your Honor.

The COURT.—I allow the question.

A. Do I know now?

Q. Yes, you know that, don't you?

A. Why certainly, I know it.

Mr. OLSON.—I have no further questions.

Mr. WARREN.—Subject to one or two matters which I believe we can get together on, I rest my case at this time.

Recess.

Mr. OLSON.—I am willing to stipulate that the testimony of C. L. Wight taken before Judge Robertson in this case be regarded as having been taken

before the present Judge hearing this case and the record as shown by the transcript of that evidence may be [3297—2466] considered by the Judge in this case as if having been taken before him.

Mr. WARREN.—Do you make the same agreement, Mr. Weaver?

Mr. WEAVER.—Yes.

Mr. OLSON.—I now offer in evidence the deposition of Captain Henry, John Henry, Master of the "Celtic Chief," taken before Harold G. Spencer, a United States Commissioner for the Territory of Hawaii.

(Mr. Olson reads deposition.) [3298—2467]

Wednesday, December 20, 1911.

In the matter of the reading of the deposition of J. LOWRY.

Page 203.

Mr. WARREN.—Referring now, your Honor, to page 6 of this deposition and particularly to lines 18 to 29, inclusive, and lines 1 to 5, inclusive, of page 7, I move to strike as constituting hearsay and a conclusion of the witness.

The COURT.—I will overrule the objection.

Mr. WARREN.—I object to the question appearing on page 7 reading as follows: "Are you familiar with the sale of vessels of the class of the 'Celtic Chief' that have been made on this coast within the last few years?" upon the ground that it appears that the witness has no personal knowledge of transactions of this kind.

The COURT.—I will overrule the objection.

Mr. WARREN.—On page 9, I move to strike the

answer of the witness to the question which reads, "What was the price?" I move to strike the answer, "I am not positive, but the record was that it was \$10,000.00," upon the ground that it appears that the witness got that price from a broker who had it in hand and that was his information.

The COURT.—Those words are stricken out by consent.

Mr. WARREN.—Then also on page 9, referring to the ship "Robert Duncan," the witness was asked this question, "What was she bought for?" to which the witness responded, "The agents informed me, \$18,000.00." I move to strike the answer as hearsay.

Mr. OLSON.—I'll consent to that too.

Mr. WARREN.—Referring to page 10, the witness was asked the [3299—2468] question, "Can you give us any specific instance of recorded sales in foreign ports of ships in this class and approximately of the age of the 'Celtic Chief'?" I object to the question and to the witness being allowed to answer any question on the ground that it is incompetent and immaterial; that sales, recorded sales of vessels in foreign ports, have no bearing on the value of sales, of vessels in the port of Honolulu and at least on the Pacific coast.

The COURT.—I will overrule the objection. If you find a case on this point, Mr. Warren, I will reconsider the matter.

Mr. WARREN.—Then on page 10, the following question to which objection is taken, the witness replied, "Yes, I have a list here which were kept on file from the 'Fair Play'."

Q. Will you please refer to that list there and give

me the names of ships that have been sold of that class and approximately that age, in foreign markets and the time they were sold? Now, I object to this, the witness' giving any testimony taken from any such memorandum, on the ground that it is not the best evidence, in the first place; hearsay, in the second place; and it is incompetent for a witness giving testimony in a deposition to get his information which he make no pretense of having in his own mind and no pretense of refreshing his mind, to read from other documents.

That objection lays to all the testimony on this question on page 10; all the testimony on page 11 down to the middle of page 12, concluding with the words, "that about completes my list."

Mr. OLSON.—Counsel agree that I may offer all of the contents in the pages which have been objected to in this testimony as a true copy of excerpts from the original numbers of "Fair Play," which have already been referred to in this deposition as a recognized shipping journal. I consent to the sustaining of the objection just entered to the testimony appearing on [3300—2469] pages, the latter half of page 10, 11, and the middle of page 12, as referred to in the objection, but I now offer in evidence all of the matters therein contained as appear in the files, regular files of the journal, "Fair Play."

Mr. WARREN.—As counsel says, I have no objection to these excerpts being introduced upon counsel's statement that they tally, but I object to the evidence being received here at all, for the reason that papers of this sort cannot serve at the outset to qualify a witness in forming an opinion as to the

vessel's worth in this market or that market.

Mr. WEAVER.—I join in this objection on the ground that it is immaterial; the introduction of these facts are immaterial.

Mr. WARREN.—Add to my objection the ground that instances of specific sales are not admissible to prove value.

The COURT.—I will overrule the objection, but it's not a point that I feel very clear upon. It comes within my discretion, of course.

Mr. WARREN.—I am willing, your Honor, that the evidence offered and received over my objection, may be considered in connection with the testimony of the deposition of Captain Pillsbury which we are now reading.

Mr. WEAVER.—Same for the Miller Salvage Co.

The COURT.—That stipulation is approved.

Mr. WARREN.—Now, on page 13, your Honor, I move to strike the answer of the witness, "I should think there would be none except for use as a coal hull," that being in response to the question, "Do you know whether or not there would be a market in Honolulu?" upon the ground that it doesn't appear that the witness is qualified to answer the question and is his own conclusion.

The COURT.—I will permit the answer; I overrule the objection.

Mr. WARREN.—On page 15, object to the question put to the witness beginning with the words, "What is your judgment, Captain, [3301—2470] of the sound value at the port of Honolulu in December, 1909, of a British iron sailing vessel?" and so forth, and ending with the words, "either above or

below decks," upon the ground that it doesn't appear that the witness is qualified to answer it; it doesn't appear that he ever bought or sold a single vessel; it doesn't appear that his information as to values of vessels is based on anything but records except on two vessels where he attended the sales and upon his own admissions they were forced sales, marshal's sales.

The COURT.—I'll overrule the objection.

Mr. WARREN.—I wish to move to strike all of his testimony on the ground that it doesn't appear that he is qualified as an expert and that his knowledge of values is based on hearsay in all cases which were referred to except two which were forced sales on his own admission.

The COURT.—The motion is denied.

Mr. WARREN.—In view of the testimony on cross-examination, your Honor, on page 16, that in all of the cases testified to by him on direct examination he had personal knowledge of the prices only in two cases, his opinion of prices of vessels should be stricken, it appearing that he had no personal knowledge and his information was entirely hearsay.

Mr. OLSON.—I have no objection to the "Polytach" going out; that is, the record of her sale, \$17,500.00.

Thursday, December 21, 1911.

Mr. WARREN.—Now, your Honor, I move to strike the answer of the witness last read appearing on page 20 of this deposition upon the ground that it is a conclusion of the witness; it doesn't appear that it is based on any facts.

The COURT.—I deny the motion.

Mr. WARREN.—I move now to strike the answer last read, your Honor, as being partly conclusion and partly absolutely hearsay [3302—2471] on his own statement.

Mr. OLSON.—I have no objection to the first sentence going out.

The COURT.—The last sentence will be stricken.

Mr. WARREN.—I'd like here to renew my motion to strike the testimony of this witness on the ground that it appears on conclusion of the cross-examination that he is not qualified and that the testimony is not based on facts or his own experience, but gathered from hearsay from many sources.

The COURT.—That motion is denied.

Mr. OLSON.—I now offer the deposition of Captain A. F. Pillsbury in evidence.

The COURT.—It will be received.

Mr. WARREN.—I wish to have my objection to this entered on the record on the ground that the witness has not been qualified as an expert as the testimony itself shows, and that the testimony is based on hearsay and conclusion and not on his own experience.

Mr. WEAVER.—I enter the same objection.

The COURT.—That objection is overruled in both instances.

Mr. WARREN.—I move to strike that answer, your Honor, as being a conclusion of the witness and not based on his own experience. The answer of the witness on page 23, "Well, I presume I do not know exactly what they did," and concluding with the words, "as compared with the cargo."

Mr. OLSON.—I have no objection to that being stricken.

Mr. WARREN.—I would like to have the answer last read stricken, on page 28, beginning with the words, "That information I do not quite know," and concluding with the words, "I think he will give you the exact information."

Mr. OLSON.—I have no objection to that.

Mr. WARREN.—I move to strike the answer of the witness on page 28 respecting the sale of the "Battle Abbey," it appearing that the witness has no knowledge of his own on the subject and has [3303—2472] gathered the information subsequently from someone else.

Mr. OLSON.—I make it an explicit matter of record that this testimony objected to is not offered for the purpose of showing that this vessel or what these vessels sold for, but for the purpose of qualifying the witness and for the purpose of showing the date upon which his information is based. That is my offer.

Mr. WARREN.—I object to the offer upon the grounds already stated, your Honor, that it's not entitled to consideration by this Court for any purpose whatever so far as the testimony of this witness is concerned.

Mr. WEAVER.—I object to this offer for the same reason.

Mr. OLSON.—In view of Mr. Eacheu's testimony, I shall now, to avoid any further delay on this point, consent to the striking out of the testimony objected to, just objected to.

(Testimony read in this deposition with reference to the Pope Tullock.)

Mr. WARREN.—Same objection to that, your Honor.

Mr. WEAVER.—I object to this for the same reason; it is mere hearsay.

Mr. WARREN.—I think to save time I'll withdraw the objection at this time and renew it on cross-examination where the situation is brought out.

Mr. WEAVER.—I withdraw my objection.

Mr. OLSON.—I am perfectly willing to have that "Dromeo" go out.

Mr. OLSON.—Now, if the Court please, I assume that the same objection will be made here as was made to Captain Pillsbury's testimony, this list of foreign sales. I am willing that the testimony of Captain Medcalfe appearing on pages 30, 31, and 32, giving the particulars of sales of vessels in foreign ports, be stricken as a part of this deposition, but I now, at this time, offer all of the particulars of such foreign sales as appearing in this deposition on pages 30, 31, and 32, [3304—2473] to be read in connection with the testimony in this deposition of Captain Medcalfe, as being the particulars appearing in the commercial lists of sales appearing in "Fair Play," which has already been referred to as a standard shipping journal; offer "Fair Play" and also the "Liverpool Journal" accounts, it being stipulated by counsel, opposing counsel, that these particulars may be offered in lieu of the original parts of this journal, they waiving their objection to the nonproduction of the journals, however, saving their objection to the admissibility of the testimony.

Mr. WARREN.—I consent to the substitution of these items, if the Court please, of the original journals, but I renew my objection to the admissibility of them on the ground stated in respect to the offer

of "Fair Play" in the case of Captain Pillsbury's testimony.

Mr. WEAVER.—On behalf of the Miller Salvage Co. we admit this testimony in lieu of copies of the journal and insist upon my objection that the same are incompetent, irrelevant, and immaterial as evidence.

The COURT.—The objection is overruled in each case.

Mr. WARREN.—We object to the question upon the ground that the captain has not been shown to have any knowledge of the facts; upon the further ground that it assumes a fact that has not been established in the record, and upon the further ground that the captain has not been qualified to testify.

The COURT.—The objection is overruled.

(The following question was read: "Q. What would be the value of the ship if she did not have new masts?")

Mr. WARREN.—Same objection.

Mr. WARREN.—I'll withdraw that objection.

Mr. WEAVER.—Miller Salvage Co. withdraw their objection.

Mr. WARREN.—We object to that on the same ground as stated heretofore, that the witness is not qualified, in the first place; that it's immaterial; this witness can't assume to pass on the [3305—2474] price of a hypothetical vessel when there's absolutely nothing stated about conditions.

The COURT.—The objection is overruled.

Mr. WARREN.—I move to strike on page 39 the answer of the witness beginning, "Were going out

of the ship business.”

Mr. OLSON.—I am perfectly willing to have that answer go out.

Mr. WARREN.—I make the same motion to that answer. (Being the next answer read after the one just stricken.)

The COURT.—I think I will allow that.

Mr. WARREN.—Referring to page 40, the testimony of Captain Medcalfe, I move to strike the answer of the witness beginning with the words, “Well, you can put it down as a starting basis,” and concluding with the words, “has taken Lloyds register and looked him up,” upon the ground that it is purely a voluntary conclusion of the witness and not based on any information.

The COURT.—I will overrule the objection.

Mr. WARREN.—Now, in view of the last two answers just read, I wish to move to strike the testimony of this witness as to the “Battle Abbey” appearing on page 28, “The Demero” on page 28, and the ——— page 29, on this witness’ own admission that he has no knowledge of these sales.

Mr. OLSON.—If the Court please, the “Battle Abbey” has already been stricken.

Mr. WARREN.—I’ll add to my motion the “Hawaiian Isles,” page 28 and 29, and the “Kaiulani” on page 29. Then I move to strike the entire testimony as to all of these vessels for the reason that it does not appear that he has personal knowledge in any single instance.

The COURT.—We will adjourn to to-morrow morning at nine o’clock.

Friday, December 22, 1911.

The COURT.—The testimony on cross-examination, it seems to me, is uncertain which items the witness is testifying to on direct [3306—2475] examination of his own knowledge. As to the items except as to the "Kaiulani," whose name was changed, of which the witness testified in another place, I will sustain the objection.

Mr. WARREN.—That is, grant the motion to strike?

The COURT.—Yes.

Mr. WARREN.—Your Honor grants the motion to strike as to all except the "Kaiulani"?

The COURT.—Yes.

Mr. WARREN.—I think, your Honor, that last remark on page 44 should be stricken.

The COURT.—The motion is denied.

Mr. WARREN.—I move to strike that answer, your Honor, on page 45, "I know it from my experience, practical experience," should go out of the testimony.

The COURT.—If you read the rest of it, Mr. Warren, I think you'll see he testifies this of his own knowledge. I'll suspend the ruling.

Mr. WARREN.—Now, your Honor, I move to strike from the testimony of this witness all the witness' answers appearing on page 45 of this deposition upon the ground that the witness himself and by his answers indicates that he does not know this except from his experience and the conclusion at the end of the testimony. I know that should be taken simply as the ordinary statement of a person who knows because he considers himself reliably informed.

The COURT.—I overrule the objection.

Mr. WARREN.—I'd like to renew my motion to strike from the testimony of this witness all of his testimony appearing on pages 39 and 40 beginning with the answer "Yes, because there is no remuneration for them," on page 39, and including two lines on page 40, upon the grounds that it appears by the testimony of the witness on cross-examination that this is simply hearsay. [3307—2476]

The COURT.—I deny the motion. The deposition of J. Medcalfe is received in evidence.

Mr. OLSON.—I now complete my offer of the testimony of J. Medcalfe in evidence.

Mr. WARREN.—I object to the offer, your Honor, on the ground that this witness by his own testimony discloses that he has absolutely no knowledge of values of ships on the Pacific Coast from his own experience; that his sole information is on hearsay, and his knowledge has been confined to one or two instances of sales which he has attended and he has not identified those sales, and that testimony has been stricken. My objection includes that he is not qualified to pass on value of vessels at Honolulu.

The COURT.—The motion is denied.

Mr. WEAVER.—The record will show that we make the same objection.

Mr. OLSON.—I now offer the deposition of JAMES C. ESCHEU, beginning on page 45 of this transcript.

Mr. WARREN.—I move to strike the answer of the witness appearing on page 48 as to the "Battle Abbey," "Well they told me."

The COURT.—It is so ordered.

Mr. WARREN.—I move to strike the answer on page 49, your Honor, "No, not true, it was around \$40,000.00," it appearing that the witness was not personally informed that the sale was made in England. (Argument by counsel and Court.)

Mr. OLSON.—The motion is then denied, your Honor?

The COURT.—Yes.

Mr. WARREN.—We object to the question for the reason that it is apparently directed to a valuation of the "Celtic Chief," the witness has not been shown to have any particular knowledge of the vessel as she lay in Honolulu; and for the further reason that the witness has not been qualified as an expert to pass upon the value of the vessel. [3308—2477]

The COURT.—Objection overruled.

Mr. OLSON.—That's a question appearing on the bottom of page 50.

Mr. WARREN.—I move to strike that answer your Honor.

Mr. OLSON.—I have no objection, your Honor; all the testimony concerning the "Battle Abbey" is stricken.

Mr. WARREN.—The answer of the witness appearing on page 54 as to the condition of the "Battle Abbey"; the answer beginning, "She had been kept up very well," and concluding, "He said she was in pretty good shape." Is the motion granted, your Honor?

The COURT.—Yes.

Mr. OLSON.—I object to the question on page 54 reading, "Would you sell her for \$20,000.00 if you

could get that?" on the ground it is incompetent, irrelevant, and immaterial.

The COURT.—I will overrule the objection.

Mr. OLSON.—I offer the deposition of James Escheu in evidence.

The COURT.—It is received in evidence.

Mr. WARREN.—I would like to enter an objection to the offer upon the ground that it doesn't appear that the witness is qualified to testify as to the value of a ship in the port of Honolulu.

Mr. WEAVER.—Same objection on behalf of the Miller Salvage Co.

Mr. OLSON.—I take it, the objection is overruled.

The COURT.—Yes.

Mr. OLSON.—I offer the deposition. I offer in evidence the deposition of WM. WALTER KELLOCK, which was taken under a commission by Carl R. Luke, Consular General of the United States of America, at London.

Mr. WARREN.—To which offer we object on the ground that it does not appear that the witness is qualified to testify as to the value of a ship of the class and character of the "Celtic Chief" in Honolulu or on the Pacific Coast.

Mr. WEAVER.—We make the same objection on behalf of the Miller [3309—2478] Salvage Co.

The COURT.—The deposition is received in evidence; the objection is overruled in each case.

Mr. OLSON.—I now offer the deposition of JOHN HUGHES in evidence.

Mr. WARREN.—To which offer we object on the ground that it does not appear that the witness is qualified as an expert to testify or express an opin-

ion as to the value of ships of the class and character of the "Celtic Chief" in Honolulu or on the Pacific Coast.

Mr. WEAVER.—The same objection we make on behalf of the Miller Salvage Co.

Thursday, December 28, 1911.

Mr. OLSON.—I'd like to offer the deposition of HERMAN SCHROEDER, and I'll complete my offer upon the final reading of the deposition.

Mr. WARREN.—Now, your Honor, I'd like to move to strike the portion of this answer which reads, "By that means the 'Celtic Chief' was floated, through the rising tide about eleven-thirty P. M." as being a conclusion of the witness, an opinion upon matter on which he is not qualified to testify, not having qualifications heretofore required of a witness by this Court.

Mr. WEAVER.—The Miller Salvage Co. make the same motion for the same reasons.

Mr. OLSON.—We admit that the captain is not qualified to testify. I'm willing that the words, "By that means," etc., be stricken and also the words, "Through the rising tide." I am perfectly willing to have the whole clause go out as a matter of fact.

Mr. WEAVER.—I move to strike on the ground that this is hearsay the words, "After the captain of the 'Celtic Chief' told me." [3310—2479]

Mr. WARREN.—I join in that motion, your Honor.

Mr. OLSON.—I have no objection to its being stricken out.

The COURT.—Beginning with the words, "The captain," to the end of the paragraph; is that right?

Mr. OLSON.—Yes, and part of the answer in response to interrogatory No. 11.

Mr. WARREN.—I wish to interpose an objection at this time to any answer of the witness being allowed to this question for the reason that it appears by the testimony that he is not qualified to answer. I state further and call attention more particularly to the following points: First, no salvage experience of the witness has been shown; second, that he knows the tonnage and horse-power of the “Arcona” only by hearsay; that point will more particularly appear on cross-examination; he is ignorant of the agencies at work on the vessel; he knows nothing of the Miller anchor except as he stated in answer to direct question 12; in answer to direct interrogatory 36 he said he did not see anything; in answer to direct question No. 30, he does not know what power was exerted on his lines and did not know the power of the engines which he said were hauling on these hawsers, his own engines; in answer to direct question No. 34, respecting the steamers, he said I do not know what various steamers and I do not know what they did; further, he doesn’t appear to know the weight of the “Celtic Chief” and he doesn’t appear to know the weight of its cargo nor how much was taken out.

Mr. OLSON.—I have no objection to the answer going out without admitting the soundness of the objections.

Mr. WEAVER.—The answer, then, is stricken, your Honor, to direct interrogatory No. 13?

The COURT.—Yes.

Mr. WARREN.—In view of that answer, I move to strike the answer to direct interrogatory No. 6

where he has assumed to state the tonnage and horse-power of the "Arcona." [3311—2480]

Mr. OLSON.—If counsel insists on that point I now give notice of taking of the deposition of some officer of the German empire or Government who is competent to give us the records from the German navy. I now move at this time that a ——— issue to the naval department or some officer of the naval department, his name to be furnished later, we can get it by cablegram or otherwise, for the purpose of getting this information.

Mr. WARREN.—We object to the motion, your Honor, and the notice, upon the ground that it comes too late; testimony has been taken; this testimony has been on file in this court and these witnesses were interrogated directly on these subjects and if it appears that they don't know it doesn't follow, as a matter of course, that because a witness' deposition fails that another deposition can issue.

Mr. OLSON.—I'm willing to have it stricken out here if he will now stipulate in the record that it can be shown that her tonnage is what he testified to and her horse-power.

Mr. WARREN.—I'm willing to do that. What I want to do is to have it out of the record in the testimony of this witness.

Mr. OLSON.—I have no objection to the answer to direct interrogatory No. 6 being stricken, it being stipulated by counsel that the tonnage of the "Arcona" was 3,100 tons and her horse-power 8,000.

Mr. WARREN.—Accept counsel's statement that that is a fact and so stipulate.

The COURT.—Stricken by consent under stipulation shown in Reporter's notes.

Mr. WEAVER.—The Miller Salvage Co. so stipulate.

Mr. OLSON.—I then withdraw my motion for the taking of the deposition.

Mr. WARREN.—I think, your Honor, the answer to cross-interrogatory [3312—2481] No. 25 should be stricken as not responsive and irrelevant and immaterial.

The COURT.—Objection overruled.

Mr. WARREN.—The objection as to the entire question being overruled, I wish to move that the portion of the answer, "So that they did not get rested," be stricken, it being a conclusion of the witness.

The COURT.—That objection will be overruled.

Mr. WARREN.—I think in view of that answer, your Honor, his answer to direct interrogatory No. 36a in so far as it refers to the condition of the haw-sers between the "Arcona" and the "Celtic Chief," should be stricken.

I'd like to renew my motion and make it read to the entire answer No. 36a, in view of the fact that the witness admits that some parts of his testimony are based upon observations that were not made by him personally, that were reported to him by his first lieutenant who made them personally, and the witness does not know what part of the testimony is his own and what was made by others.

The COURT.—I'll overrule the objection.

Mr. OLSON.—Deny the motion.

The COURT.—Deny the motion, yes.

Mr. WEAVER.—It is understood that we take the same objection.

Mr. WARREN.—Move to strike the portion of the answer which reads, "It is said to have been fastened to a seven-ton stone or anchor."

Mr. OLSON.—That being the testimony in response to cross-interrogatory No. 24. That's stricken.

The COURT.—Yes.

Mr. OLSON.—I now, if the Court please, offer the deposition of Herman Schroeder in evidence.

The COURT.—It may be received.

Mr. OLSON.—I next want to take up the deposition of [3313—2482] Lieutenant CONNEMANN.

Now, if the Court please, in dealing with these depositions, I think the rest of the depositions are all taken in German, and by stipulation of counsel the testimony has been translated from German into English by Mr. B. von Damm and that will be, by stipulation of counsel, taken in place of the original German as a correct translation thereof. I now offer the deposition of Felix Maria Connemann in evidence and will complete my offer upon reading the deposition.

Mr. WEAVER.—Object to that, if your Honor please, on the ground it is hearsay, and ask that it be stricken out, it appearing that the witness is not qualified to say.

Mr. WARREN.—Your Honor, I move to strike the answer of the witness Connemann to direct interrogatory No. 10 entirely as to the first part of his

statement, that the "Arcona" pulled the vessel "Celtic Chief" off the reef, upon the ground that it doesn't appear that the witness is qualified or from a point of knowledge of the different agencies at work and the powers exerted by each and conditions necessary to enable any witness to testify as to what pulled the "Celtic Chief" off the reef, and as to the remainder of the answer that it is incompetent and hearsay and a conclusion.

Mr. OLSON.—The latter part of the question I have no objection to that going out.

The COURT.—I'll strike this latter part by consent and the first part I'll leave.

Mr. WEAVER.—Reversing your ruling then?

The COURT.—Yes.

Mr. WARREN.—I wish, referring to what you might call paragraph or topic two, in answer 11 of direct interrogatories to witness Connemann, I move to strike the entire paragraph, the same reading, That the steamers which stood by the "Celtic Chief" and designated A. B. in the different named reports and so on, were, at that time, [3314—2483] unable to hold the "Celtic Chief" from going on the reef and so on. This is incompetent, your Honor, conclusion of the witness, hearsay, he is referring to the report above mentioned, dated December 28 and so on; and as to his saying that they were not able to hold the "Celtic Chief," is purely conclusion and as to his stating the cause of his not being able to hold them is all conclusion.

Mr. OLSON.—I have absolutely no objection to that portion of the answer being stricken out which

reads, "and designated as A and B in report of December 28, 1909."

The COURT.—I think we might leave this to cross-examination.

Mr. WARREN.—Now, I move to strike, your Honor, the answer of the witness Connemann to direct interrogatory No. 12, in so far as it refers to these steamers were apparently small power, being a voluntary statement of this witness with nothing but his conclusion behind it.

Mr. OLSON.—Then the clause in the answer to interrogatory No. 12 reading "were apparently small power," is stricken is that it, your Honor.

The COURT.—Yes, stricken by consent of all parties.

Mr. WARREN.—I think that answer should be stricken as not responsive and incompetent, the answer to direct interrogatory 17.

Mr. OLSON.—It doesn't help us in any way.

Mr. WEAVER.—Same objection to that.

Mr. WEAVER.—I move to strike that out (referring to answer to direct interrogatory 26) as not responsive.

The COURT.—OVERRULE the objection.

Mr. OLSON.—I think that ought to be taken out. I'm willing to have it stricken; that's the answer to direct interrogatory No. 33.

Mr. WARREN.—Move to strike that out as a conclusion of the witness; he doesn't attempt to testify at all as to what he is asked.

Mr. OLSON.—I'm willing that the last line should go out. [3315—2484]

Mr. WARREN.—Not only the last line, but the last clause; that second sentence.

Mr. OLSON.—I admit that the objection is sound.

Mr. WARREN.—I move to strike that out. (Referring to No. 34.)

Mr. OLSON.—The motion is then denied?

The COURT.—Yes.

Mr. WARREN.—Now, your Honor, I think that answer should be stricken as a conclusion of this witness. I move to strike out that portion of the answer to direct interrogatory 36, “their weak machinery.”

The COURT.—I will strike out the word weak.

Mr. WARREN.—I interpose the same objection to direct No. 38, as heretofore interposed to the same interrogatory to Captain Schroeder on the ground that the witness is not qualified from the standpoint of knowledge of the agencies at work.

Mr. WEAVER.—I base an objection on the same reasons.

The COURT.—I would like to reserve that ruling.

Mr. WARREN.—Referring now, your Honor, to the witness' answer to cross-interrogatory No. 6, I move first to strike from it all reference to matters contained in the report of December 28, 1909.

The COURT.—The first sentence in paragraph 6?

Mr. WARREN.—The first sentence of the answer, the paragraph numbered two.

Mr. OLSON.—Your Honor was referring to the first paragraph. I have no objection to the first three or four lines going out, that is, the first sentence ending up, “and which I have prepared jointly

in connection with the commander of the 'Arcona.' "

Mr. WARREN.—That, then, will be stricken, your Honor?

The COURT.—Yes.

Mr. WARREN.—Then the first two lines of the paragraph numbered two reading, "That the steamers A. and B. mentioned in the report [3316—2485] were unable to hold the 'Celtic Chief,' for the reasons set forth therein" upon the ground that it is not proper.

Mr. OLSON.—Then, if the Court please, I'm perfectly willing that the words for reasons set forth therein go out.

The COURT.—Answer to cross-interrogatory number 6, paragraph numbered two, the words "for reasons set forth therein" are stricken.

Mr. WARREN.—Now, I move to strike the last two lines of this paragraph two, as being not responsive to the question, opinion and a conclusion.

Mr. WEAVER.—The Miller Salvage Co. joins in this motion.

Mr. OLSON.—I have no objection to that going out.

The COURT.—That is in answer to the same interrogatory; the words at the end of paragraph two are stricken.

Mr. WARREN.—I move to strike paragraph 5 of this answer as being not responsive.

The COURT.—Subsection 5 in answer to cross-interrogatory No. 6 is stricken.

Mr. WARREN.—Now, I move to strike subparagraph 8 as a whole, your Honor, it being used upon

conclusions and hearsay as shown by the latter part of it.

Mr. OLSON.—I have no objection to that going out. I consent to it being stricken; subsection 8 of the answer to cross-interrogatory No. 6.

The COURT.—The whole thing.

Mr. WARREN.—Also to subparagraph 10, your Honor, upon the ground that it's all hearsay.

Mr. OLSON.—I've no objection to that. 11 can go out also.

The COURT.—Eleven goes out by consent.

Friday, December 29, 1911.

Mr. WARREN.—I move that the answer to cross-interrogatory No. 8 be stricken. [3317—2486]

Mr. OLSON.—No objection.

Mr. WARREN.—Make the same motion as to answer No. 10; not responsive.

Mr. OLSON.—No objection.

Mr. WARREN.—I move that the witness' answer to cross-interrogatory No. 17 be stricken as incompetent.

Mr. OLSON.—I have no objection to it being stricken.

Mr. WARREN.—I move that the second sentence of the answer to cross-interrogatory No. 31 be stricken.

Mr. OLSON.—I have no objection.

Mr. WARREN.—I'd like at this time to save any matter of right in the premises, to renew my objections and motions to strike the answers of the witness to direct interrogatories No. 10, the portion of No. 11 heretofore indicated, and No. 38, to which I assume your Honor will reserve your ruling until the cross-examination is entirely concluded.

(Reading of cross-interrogatories on behalf of Miller Salvage Co.)

Mr. WARREN.—Your Honor, I move to strike the first sentence of the witness' answer to cross-interrogatory 10 X as being a conclusion and not responsive in any way.

The COURT.—I will deny the motion.

Mr. WARREN.—Now, your Honor, I move to strike the second sentence in answer to No. 13-X as being an opinion and not admissible.

Mr. WEAVER.—I move to strike on the ground that it is not responsive and that it calls for a conclusion of the witness in a matter in which he is not proved to be an expert.

The COURT.—This really is the same question that I reserved a ruling on in another matter. I will reserve this also.

Mr. WARREN.—I move to strike from the witness' answer to cross-interrogatory No. 19-X the portion reading, "as we succeeded in floating her in the manner last mentioned before that time," upon the ground that it is an opinion of the witness on a matter upon which he is not qualified to testify; it is not responsive [3318—2487] and not competent.

Mr. WEAVER.—My motion is addressed to the same phases.

The COURT.—I will leave that with the others; it is reserved.

Mr. WARREN.—I now renew my objections heretofore stated on the questions where your Honor has reserved the ruling on the testimony of the witness.

Mr. OLSON.—Put down Mr. Warren's statement

this is not a motion to strike.

Mr. WARREN.—It certainly is not a motion to strike; it is an objection to the witness' answer to this interrogatory.

Mr. OLSON.—Put it down there that this is an objection to direct interrogatory No. 38.

The COURT.—The statement of all these reserved ruling requires some consideration of what is sufficient to qualify an expert and also what facts have established that he is an expert; what facts must be taken into consideration in getting his opinion.

Mr. OLSON.—I offer the deposition of Felix Maria Connemann, which has just been read, subject to the reserved rulings, in evidence.

The COURT.—It may be received in evidence subject to the rulings which have been reserved.

Mr. OLSON.—I'll ask that the translation which the Court has used and on which the rulings have been noted be filed with the deposition. [3319—2488]

Thursday, January 4, 1911.

[Testimony of Norman Watkins, for Libellee.]

Direct examination of NORMAN WATKINS, a witness called on behalf of libellee, and sworn.

Mr. OLSON.—Mr. Watkins, your full name is Norman B. Watkins?

A. Norman Watkins; no middle initial.

Q. And you are the manager of the Hawaiian Fertilizer?

A. My title is General Superintendent.

Q. Of the Hawaiian Fertilizer Co., Ltd.?

A. Of the Hawaiian Fertilizer Co., Ltd.

Q. And what is the business of the Hawaiian Fer-

(Testimony of Norman Watkins.)

tilizer Co., Ltd.? A. Fertilizer manufacturers.

Q. Will you state, Mr. Watkins, how long you have been connected with the Hawaiian Fertilizer Co., Ltd.?

A. Ever since they started business, thirteen years ago this month.

Q. And what had been your occupation prior to that time?

A. Why, prior to that I had a short period at Dover, N. H., as an assistant to my brother in a chemical laboratory, and I followed the sea for a short time.

Q. What is your profession aside from your business in the Hawaiian Fertilizer Co., Ltd.?

A. I was educated as a chemist.

Q. Where did you get your education?

A. At the Massachusetts Institute of Technology, Boston.

Q. How long were you at the Massachusetts Institute of Technology studying chemistry?

A. Three years.

Q. State whether or not you have had any experience as a [3320—2489] chemist.

A. The first three years of my connection with the fertilizer company, the Hawaiian Fertilizer Co., I was the chemist and did chemical work in the laboratory.

Q. And that brought you in contact, did it, with the analysis of fertilizer and ingredients in fertilizer? A. It did almost every working day.

Q. How long have you been superintendent of the company?

(Testimony of Norman Watkins.)

A. Approximately for the past five years.

Q. And prior to that time?

A. Prior to that time I had charge of the city offices.

Q. And in your present capacity, do you have any personal supervision or otherwise of the chemical work?

A. I have supervision, although I do not do any actual work.

Q. Are you familiar with nitrate of soda as an ingredient in fertilizer used by your company?

A. I am.

Q. Will you state what the solubility is of nitrate of soda?

Mr. WARREN.—Now, your Honor, I object to this as improper rebuttal.

The COURT.—I allow the question. Objection overruled.

Q. Will you state, Mr. Watkins?

A. Please repeat the question, Mr. Reporter.

(Question read.)

A. Nitrate of soda is considered a very, one of the very soluble salts, and as to its degree of solubility, I can state that a hundred parts of nitrate of soda will be dissolved by a hundred parts of water; that is to say, a hundred pounds of water would dissolve a hundred pounds of nitrate of soda.

Q. That's at what temperature of the water?

A. Well, I figured it out at 78°.

Q. And what is the ordinary temperature of the water here, of [3321—2490] the ocean water?

A. 78°.

(Testimony of Norman Watkins.)

Q. Now, do you know what the solubility, degree of solubility of sulphate of potash is?

A. Under the same conditions of temperature, thirteen parts sulphate of potash would be dissolved in a hundred parts of water. That is to say, a hundred pounds of water would—it would require a hundred pounds of water to dissolve thirteen pounds of sulphate of potash.

Q. With the water at the same temperature?

A. With the water at the same temperature.

Q. Can you state the other parts of the cargo of the "Celtic Chief," that double manure salts and what else?

A. Double manure salts and a double super-phosphate.

Q. Will you state whether or not the degree of solubility of those two elements is greater or less than that of sulphate of potash?

A. It is even less soluble than sulphate of potash.

Q. In figuring this degree of solubility or the solubility of these various matters have you taken fresh water or salt water?

A. I have taken fresh water.

Q. What would be the degree of solubility in salt water of the same temperature?

A. Sea water would be a less active solution than fresh water.

Q. That is to say, it would take more salt water?

A. Because the salt water already has a certain amount of salts?

Q. That is, it is already in solution; a certain amount of salts? A. Yes.

(Testimony of Norman Watkins.)

Q. Do you remember the "Loch Garve" case?

A. I do.

Q. The cargo there was nitrate of soda, was it not?

A. Entirely.

Q. In the "Celtic Chief" the fertilizer that was brought, or the ingredients for fertilizer constituting its cargo, what [3322—2491] were they?

A. There was 1720 long tons of sulphate of potash, 700 long tons of double salts; that is the commercial term, chemically it is a double salt of potash and manure, but its trade name is double manure salts; and a hundred long tons of double super-phosphate.

Q. When was your attention first called to the going ashore of the "Celtic Chief" in December of 1909?

A. On Monday morning, December 5, 1909. I think that's the date, at about, oh, few minutes before eight. I generally go to my office around eight o'clock. A young man working in Brewer's place—we had our offices upstairs before they tore it down—told me that there was a ship on the reef outside, and I inquired of him what ship it was, and he didn't know, and I went to the stevedore office, and they said, "It's your ship, 'Celtic Chief.'"

Q. When you say December 5, might it have been December 6?

A. It may have been. I rather think it was the sixth. I think the fifth was Sunday.

Q. When you spoke of this being your ship, what connection had the Hawaiian Fertilizer Co. with the "Celtic Chief"?

A. The ship and cargo was consigned to us.

(Testimony of Norman Watkins.)

Q. And you were also agents for the vessel?

A. Our firm were agents for the vessel.

Q. Where were the offices of the Hawaiian Fertilizer Co.?

A. On the second floor of the Brewer Building.

Q. Is that building still extant?

A. No, it has been torn down.

Q. That was located where?

A. Why, it was located on Queen Street between Nuuanu and Kaahumanu Street, about midway, right in front of what is now the Matson wharf shed.

Q. Will you state whether or not from your offices or any [3323—2492] part of that building you had a view of the "Celtic Chief" as she was aground?

A. From the back window; that is, a small window over a urinal in the toilet; that is right in the back of the building.

Q. What story?

A. On the second floor. We could see the masts of the "Celtic Chief" over the quarantine shed.

Q. About what distance is the quarantine shed from that point, the point where you observed the "Celtic Chief." I mean the point where you were standing?

A. I don't know as I'm a judge of distance, but I'd say from a quarter to three-eighths of a mile.

Q. And about how far distant from the building that you were in would you say it was to the point where the "Celtic Chief" was aground?

A. From a mile and a half to two miles, as near as I could judge.

Q. Will you state whether or not you took any ob-

(Testimony of Norman Watkins.)

servation of the "Celtic Chief" with reference to any other bearing?

A. Well, after a visit to the "Celtic Chief" in the morning.

Q. About what time?

A. Well, I guess I got aboard the "Celtic Chief" around nine o'clock, possibly a little after, and stayed there possibly a half an hour and when I returned to my office I went out to this back window to see if the vessel could be seen, and I could see it, as I said before, I could see the vessel's masts. Her hull was hidden by the wharf shed. I could see the vessel's masts. It looked at that time as if a yellow flag was floating over the vessel's foremast. I thought it very peculiar, and took a second look, and I found it was a flag-pole on the end of the quarantine shed, and that flag-staff was in direct line with the "Celtic Chief's" foremast, and it appeared that the flag was blowing on the "Celtic Chief."

Q. As a matter of fact, the flag was on the quarantine flag staff?

A. It was after I took a second [3324—2493] look, and I made up my mind at that time that edge of the window casing and that flag staff would form an excellent range for deciding whether the vessel was gaining or losing ground.

Q. You say you have been to sea? A. I have.

Q. State whether or not you take any interest in shipping and vessels.

A. I take more interest in shipping and vessels than anything going. That is my hobby. My mother has five brothers that were shipping masters.

(Testimony of Norman Watkins.)

Q. You were shipping master here in Honolulu?

A. Well, I was shipping commissioner, United States shipping commissioner.

Q. Will you state whether you took any later observation of the "Celtic Chief" from the same point in the Brewer Building?

A. I did, on Wednesday morning, and the reason for my taking the observation was on account of a discussion that I heard on the deck of the "Celtic Chief" on Wednesday morning between Captain Macaulay and Captain Schroeder of the German cruiser. Macaulay maintained that the vessel had not lost any ground, at least had not come further on shore, and the German officers were maintaining that she had.

Q. They were talking in English, were they?

A. Oh, yes. I didn't enter into the conversation at all. I didn't want to say anything, but I was very careful at looking at my range, and I found when I got back to my office and looked out of that back window that the flag, instead of apparently floating from the foremast, was floating from the mainmast. That is, this flag-pole was in exact line with the mainmast on Wednesday morning instead of being in exact line with the foremast.

Q. Is there more than one pole on the quarantine shed or was there at that time?

A. I think not. In fact, I know there has been but one flag-pole. I see it practically every day of [3325—2494] my life on the waterfront.

Q. What was the position approximately of the "Celtic Chief" with reference to you?

(Testimony of Norman Watkins.)

A. Apparently. You could see the three masts; apparently she was broadside.

Q. That is at right angles?

A. She was apparently at right angles. Of course, it is impossible to tell unless you could see the hull. Apparently she was broadside or nearly so.

Q. Do you know approximately the distance between the mainmast and the foremast of the "Celtic Chief"?

A. Why, I should say about seventy feet.

Q. About seventy feet? A. About seventy.

Q. Now, what direction was the foremast pointing with reference to the other masts? Inshore or away from shore?

A. Well, about, it was pointing inshore.

Q. That is to say that—

A. But from my line, of course, the vessel being broadside to me, the bow would naturally be towards Waikiki along that way, possibly closer to the harbor.

Q. Then, with reference to the bearings that you had, this flag-staff with the yellow flag on the quarantine shed and the window from which you took the observation, which way had the mainmast of the "Celtic Chief" moved, inshore or away from shore?

A. It moved inshore.

Q. Which would indicate, would it not, that the "Celtic Chief" had moved inshore just that much?

A. Exactly.

Q. You had seen the "Celtic Chief" at various times, had you not?

A. Why, I was on board of the "Celtic Chief" Monday, Tuesday, and Wednesday. On all days she was on the reef.

(Testimony of Norman Watkins.)

Q. So that you are familiar with what masts she had?

A. Yes, I'm familiar with the rig, a three-masted ship.

Q. As representing the vessel, being superintendent of the agent of the vessel, the Hawaiian Fertilizer Co., Ltd., did you have [3326—2495] any conversations with the commander of the German cruiser, Captain Schroeder, with reference, looking to his taking the German cruiser to aid the "Celtic Chief"?

A. No, those arrangements were made at my request by both the British consul and the German consul.

Q. Did you have any conversations at all with the commander of the "Arcona" with reference to the matter of her assisting the "Celtic Chief"?

A. I had quite a talk with him on the way out.

Q. What day? A. On Tuesday morning.

Q. Will you state what, in substance, that conversation was with reference to the assistance of the "Celtic Chief" by the "Arcona"?

Mr. WARREN.—I object. The witness testified that he had no conversation with him respecting the aid to be rendered by the "Arcona."

The COURT.—The objection is overruled.

A. I had a conversation with the captain going out in the launch and thanked him for the interest he was apparently taking in going out and helping the "Celtic Chief" and he seemed to be very loathe to say anything about it until he had seen conditions. Now, he wouldn't say much about it, but on the way back I began talking with him and asked him if now

(Testimony of Norman Watkins.)

that he had seen conditions that he wasn't perfectly willing to go out right away and he said, no, he'd made up his mind that he would not go right away but he'd wait until the next day and then if the agencies at work had not pulled the ship off he would go out the next morning.

Q. Did he say anything further about that?

A. Well, he, as I say, he seemed to be, he didn't relish the job; that's the impression he gave. He didn't relish the job of going out.

Q. Why?

Mr. WARREN.—Object to that unless the witness can tell us the conversation without giving the reasons.

Q. Did he say anything with reference to the other salving [3327—2496] agents?

Mr. WARREN.—I object to that, your Honor, as its going to be an opinion of this witness.

Q. As to what the other salving agents could or could not do?

A. The whole reason why he wouldn't go out on Tuesday was that he wanted to—

Mr. WARREN.—I think that is an improper question.

The COURT.—If there is any answer of the nature that Mr. Warren objects to I will rule it out.

A. On Tuesday, on the way back he decided that he wouldn't get into the game until the following day and then he would only go in the following day unless—he wouldn't go in the following day unless the agents at work had failed to pull her off at that time.

Q. Did he in any way speak of the other agencies

(Testimony of Norman Watkins.)

or the endeavors of the "Arcona" with the other agencies in the meantime?

A. Why, on the following morning, when we went out again on Wednesday morning, he stated at that time that he wanted the position that the "Intrepid" held and told the captain in my presence, Captain Henry, that he wanted that position and unless that position was made clear for him that he would not take hold.

Q. About what time of day was that, do you remember?

A. Why, it was along about between nine and ten, I should judge, in the morning.

Q. And you were with him during the time that he was on board of the "Celtic Chief"?

A. Why, part of the time he was making observations around and I was with the captain a good deal of the time talking with the captain and every now and then he would come up to ask the captain some question.

Q. You were either with Captain Henry or with the commander of the cruiser on that vessel?

A. Most of the time.

Q. On Monday how many visits did you make out there? A. Two. [3328—2497]

Q. At what time of day?

A. I went out in the morning probably got out to the vessel around nine o'clock and again in the afternoon from three to four o'clock.

Q. Will you state what the, what kind of a sea was running at that time whether there was any swell or anything of that sort?

(Testimony of Norman Watkins.)

A. To my mind on Monday there was quite a heavy swell, although the swell was such that the launch went alongside and we went up the side steps without any difficulty, but I noticed the swell particularly on Monday afternoon. I noticed it particularly the way the "Concord" and the "Kaimiloa" would pull and tug at the lines and the way that they rose and fell, and it seemed to me that there was quite a heavy swell.

Q. Did you have any difficulty in getting off into the launch at all?

A. Well, it was simply a guess on watching your chance; there was no difficulty about it.

Q. Danger?

A. I shouldn't think so. I should say no.

Q. On Tuesday what was the condition?

A. The swell had gone down on Tuesday.

Q. Was there any material swell running on Tuesday?

A. Well, I wouldn't say it was calm, but the swell was materially less on Tuesday than on Monday.

Q. What time were you out there on Tuesday?

A. Why, I was out there in the morning; went out Tuesday morning in the launch of the officers of the "Arcona."

Q. Any difficulty in getting alongside that day?

A. No. We went out Tuesday. As I say, any time out here there is more or less swell; you can't get alongside without watching your chance to take a step.

Q. On Wednesday morning, what was the condition of the swell?

(Testimony of Norman Watkins.)

A. About the same as on Tuesday.

Q. Did you observe any of the cargo being lightered on Wednesday by the Inter-Island Steam Navigation Co. with their small boats? [3329—2498]

A. Yes, there was lightering going on on Tuesday.

Q. Did you observe that particularly with reference to whether or not there was any difficulty in the small boats staying alongside the "Celtic Chief" and receiving cargo?

A. Why, I've seen them going around the Islands and seen them discharging freight and so forth. Why, it was smooth here to what we see every day we take a trip to the other islands.

Mr. WARREN.—Move to strike the answer of the witness as not responsive; a conclusion of his own and comparing this with other conditions.

The COURT.—I deny the motion.

Q. When you compared the discharging with other ports, what do you mean—where you have observed discharging cargo by the Inter-Island Steam Navigation Co. and its boats? A. Yes.

Q. What was the latest time, the last time that you were out at the "Celtic Chief" while she was ashore?

A. Wednesday morning.

Q. About what time? A. Around nine o'clock.

Q. And you returned then to Honolulu, did you, arriving about what time?

A. Well, I was probably out there an hour. Possibly I got back about ten.

Q. And after that you were not out there at all?

A. I was not out at all.

Q. So that you did not observe what was done by

(Testimony of Norman Watkins.)

the "Arcona" after she went out?

A. Absolutely nothing. I am not familiar with her operations out there at all.

Mr. OLSON.—That's all.

Cross-examination of NORMAN WATKINS on Behalf of Libellants Inter-Island Steam Navigation Co. and Matson Navigation Co.

Mr. WARREN.—Q. What is the approximate difference with solvent powers of [3330—2499] *powers of* salt and fresh water. You say it takes more sea water than fresh to dissolve amounts of nitrate of soda. State just what approximately.

A. Why, the difference would not be great because there is a comparatively small amount of salts held in salt water. The difference would be very slight.

Q. But even if it were there isn't any question in your mind that there is enough sea water there to do the job?

Mr. OLSON.—Object to that as incompetent, irrelevant, and immaterial and on the further ground it is unintelligible.

Add to my objection there that it doesn't appear that the witness, that it is assumed that the witness knows something about the amount of water in the "Celtic Chief" where as there has been no testimony of that sort.

The COURT.—I sustain the objection.

Q. Then I'll ask you another question. I'll ask you to give me, as nearly as you can, the proportion of difference between fresh and salt water to dissolve a hundred pounds of nitrate of soda?

A. Well, I'd say, then, that in my opinion that it

(Testimony of Norman Watkins.)

would take two per cent more salt water to do the work of fresh water.

Q. So that there is no material difference?

A. Just as I testified before, that the difference would be very slight.

Q. And in either case there would practically be no difference if there is an unlimited supply of water.

Mr. OLSON.—Object to the question on the ground that it is indefinite, unintelligible, incompetent, irrelevant, and immaterial.

The COURT.—I'll sustain the objection.

Q. I'll ask you, Mr. Watkins, approximately what length of time would be necessary for, we'll say one hundred pounds of fresh water to dissolve one hundred pounds of nitrate of soda?

A. A hundred pounds of nitrate of soda would go into solution in a hundred pounds of water inside of ten or fifteen minutes.

Q. And the combination when dissolution would be complete would [3331—2500] be of about what consistency?

A. I couldn't give you the specific gravity of it.

Q. Thick or thin; watery or like powder?

A. It wouldn't be as thick as powder; it would be more dense than water, necessarily, but it wouldn't be as heavy as molasses; that is, it would be more liquid than molasses.

Q. Now, if to that composition you should *had* another hundred pounds of nitrate would the solution have any effect on the other hundred pounds?

A. Absolutely none.

(Testimony of Norman Watkins.)

Q. Would it remain dry?

A. Why, no, it would be wet, but absolutely none of it would go into solution; that is, at the constant temperature. If you raise the temperature, why, then more would go into solution.

Q. Therefore, one hundred pounds of water when not raised, would practically remain as before?

A. Yes.

Q. If a chemical reaction takes place, the mixture of the water and nitrate of soda, is there any change of temperature?

A. Yes, there is. The more soluble a substance is, why, the lower the temperature would be. That is, as you—the more active the dissolving is the greater, the lower the temperature; in fact, that is true to a degree that in dissolving, in dissolving some salts that are very soluble in water, if you place your glass beaker on a table and add water under it, the water would, the water between the beaker and the table would freeze. That is quite a marked lowering of temperature.

Q. With respect to degree of solubility, some reach high and some low? A. Oh, yes.

Q. Now, in what class would you say nitrate of soda would be?

A. Well, nitrate of soda is considered very soluble. There is no class of one, two, three or four in the solubility tables. They'll take up every salt, every chemical compound there is and generally they are arranged in alphabetical order with the degrees of solubility.

Q. So that a hundred pounds of water, fresh

(Testimony of Norman Watkins.)

water, and a hundred [3332—2501] pounds of nitrate, the temperature would be lower than 78°?

A. Well, as the action went on. It would later.

Q. If the amount of water were trifling, would that make any difference in the amount the temperature would go down?

A. Why, the temperature would not go down so rapidly because there would be a greater body for the temperature to change.

Q. But the chemical reaction and the lowering of the temperature would not be—I'll withdraw that. The lowering of the temperature would practically be immaterial if water were constantly added, more water? That is, the more water you had the less the temperature would decrease.

A. Well, that would be decreased because there would be a greater body, of course, to cool. The greater body would act, naturally slower than the smaller body.

Q. Now, if sulphate of potash and nitrate of soda were mixed in solutions could they be afterwards dried out and separated?

Mr. OLSON.—I object to the question as incompetent, irrelevant, and immaterial, there being no nitrate of soda in the cargo of the "Celtic Chief."

Q. Didn't I understand you to testify as to nitrate of soda?

A. In the case of the "Loch Garve" I stated the entire cargo was nitrate of soda.

Q. Then we'll take the other two—we'll take sulphate of potash and double manure salts. If those were mixed those could be afterwards separated

(Testimony of Norman Watkins.)

chemically, dried out and separated?

Mr. OLSON.—I object to the question on the ground it is incompetent, irrelevant, and immaterial, and furthermore on the ground that there is nothing shown that the different portions of the cargo of the “Celtic Chief” were in such juxtaposition that they could become mixed.

The COURT.—I will allow the question.

A. I understand they are mixed in salts, Mr. Warren?

Q. Yes.

A. Yes, they could be separated. [3333—2502]

Q. You could gather them up and dry them?

A. If you had a certain amount of the solution containing the two salts, why they could be separated. That is by evaporation. One of the salts would settle before the other; that is, depending on the degree of the solubility.

Q. Do you know anything about what the expense of that kind of a separation would be?

A. I couldn't say. I will say, though, from my knowledge of the facts that if the cargo was in that condition it would simply be abandoned and we would not do it, because the expense of a proposition of that kind would be out of the question.

Q. Now, about the “Celtic Chief,” do you know just how she was ashore, astern or bow first?

Mr. OLSON.—Object to the question on the ground it is not proper cross-examination.

The COURT.—Objection overruled.

A. The “Celtic Chief” was on shore bow first.

Q. And your judgment of the distance between the mainmast and the foremast is based on ob-

(Testimony of Norman Watkins.)

servation while on board? A. Exactly.

Q. Now, the quarantine shed at that time is the same one that it is now, cross the harbor?

A. Yes, sir.

Q. And the distance which you have given is from your office to the "Celtic Chief," one and a half to two miles, or is that from the "Celtic Chief"?

A. I think that was the question, from my office to the "Celtic Chief."

Q. And you made your first observation as to the position of the foremast of the ship being in line with the flag-pole on the morning of December 5?

A. Well, it was Monday morning whatever that was.

Q. I mean the 6th?

A. Monday forenoon, not early in the morning but after I came back from the ship.

Q. By the time it got so that the flag-pole was opposite the [3334—2503] mainmast you say that was Wednesday morning?

A. That was Wednesday morning.

Q. Did you take any observation after that?

A. I think not. I was very busy. In fact, I wouldn't have taken that observation Wednesday morning if it hadn't been for the discussion which apparently arose between the captain, Macaulay, and the captain of the "Arcona." I heard that argument and as soon as I got back to the office I went to look to satisfy myself.

Q. You said you made two observations, one on Wednesday after this discussion you heard between the pilot and the captain of the "Arcona"?

(Testimony of Norman Watkins.)

A. It was either the captain or one of the officers.

Q. Can you tell us more definitely respecting the distance—was there anything said in that conversation respecting the distance the ship might move?

A. I don't recollect. As I say, I didn't enter into the conversation at all. It was simply an argument. The German officer maintained that the vessel lost ground and Captain Macaulay maintained that she didn't.

Q. As far as you remember those positions of the ———, that is, the pilot thought she had not moved at all?

A. They both maintained that they both had their bearings. The German officers said that they had their marks and they had kept the run of things, and Captain Macaulay maintained that he had his marks and he'd kept the run of things.

Q. You don't know from that conversation what length of time was included in their conversation, what day they were discussing?

A. It was Tuesday to Wednesday.

Q. Tuesday to Wednesday?

A. Yes, because we were out there Tuesday morning and again Wednesday morning and the German officer he brought that matter up. He said, "You've lost ground since we were out here yesterday."
[3335—2504]

Q. He spoke of yesterday?

A. Yes, that's when the argument arose. It was simply a friendly exchange of opinion, that was all. One maintained that she lost ground and the other maintained that she hadn't.

(Testimony of Norman Watkins.)

Q. Now, in the conversation you have told us about, between you and Captain Schroeder both going out and coming in from the vessel as to the willingness of the captain to take hold, can you remember anything more of that conversation than what you have told us?

A. Why, I can't. I do not recollect anything more definite than what I have stated.

Q. Was there any reference made to the lightering operations?

A. Not with me, but I heard the captain of the cruiser tell the captain that they ought to get busy with the lightering operations and the captain was, the captain of the "Celtic Chief," I recollect distinctly, said that they were looking any minute for the Miller lighters to return.

Q. That was on Tuesday morning?

A. That was on Tuesday.

Q. Was anything said by Captain Schroeder as to his desire that a certain amount of cargo be taken out or that all the cargo possible be taken out before he took hold?

A. I don't think that he did. I don't recollect or at least I didn't hear him tell the captain.

Q. I mean between yourself, the captain and yourself?

A. No, not about taking it, but the captain of the cruiser maintained right along that it was very necessary that the discharge of the cargo proceed as rapidly as possible.

Q. You heard nothing from him either to yourself or any conversation with Captain Henry as to his

(Testimony of Norman Watkins.)

desire that a certain amount of cargo or all possible cargo be taken out before he took hold?

A. No; the only thing I heard was the captain gave the advice that they should get the cargo 'out as rapidly as possible.

Q. Now, when you compared lightering operations at the "Celtic [3336—2505] Chief" by the Inter-Island Co. and its boats with operations that you have seen by Inter-Island boats at other island ports, I'll ask you have you any particular ports in mind.

A. Why, I have one very clear in my mind. It was the first trip I ever took in an Inter-Island steamer a matter of thirteen or fourteen years ago. I took a trip to Nawiliwili. Of course, it was not my first experience in observing the discharge of freight from these steamers and it was very rough and the thought that occurred to me at the time that the operation was rather dangerous because it was exceedingly rough.

Q. Where was this—in Nawiliwili Bay?

A. In Nawiliwili, yes. And since that time I've seen them discharge cargo at many of the island ports.

Q. And under conditions anything similar?

A. Conditions? I've seen cargo discharged under conditions similar and conditions that were worse and conditions that were better.

Q. Now, when you speak of difficulty, no more difficulty than these other places, how do you mean—in operating the boats or the slings or what?

A. Why, when a surf boat is alongside of a vessel and there is a very heavy swell, why, the crew in the

(Testimony of Norman Watkins.)

boat have got to look out that the boat is, at least they've got to keep their boat from being banged against the side of the vessel; they've also got to look out for the sling, that the sling doesn't strike them coming down and those are conditions that I call difficult. In rough water all hands have got to be on the alert that they don't get hurt themselves or that they don't hurt the cargo or that they don't hurt the boat.

Q. You saw the "Concord" and the "Kaimiloa" doing considerable surging?

A. Yes, they were doing considerable surging, but all the cargo, as I observed, was being handled by hand. [3337—2506]

Q. On those boats?

A. On those boats, so of course the difficulties of boats and slings and so forth didn't prevail.

Mr. WARREN.—That's all.

Cross-examination of NORMAN WATKINS on Behalf of Libellants Miller Salvage Co., Ltd.

Mr. WEAVER.—Q. What, if anything, was the angle of the "Celtic Chief" with the angle of your line when you were looking out along your ranges on Monday and Wednesday? Was it right angles or less?

A. Apparently it was at right angles. That's the way it looked. Of course, not knowing how far the masts ought to appear, of course, I couldn't say. Apparently you could see the three masts.

Q. You can judge more or less accurately.

A. I'd rather withdraw that the vessel was at right angles. I think that the vessel was more at an angle.

(Testimony of Norman Watkins.)

Q. How much more? A few degrees, five degrees, not as much as forty-five? A. I wouldn't say.

Q. Five or ten?

A. If I was going to venture a statement, I'd say perhaps from ten to fifteen degrees off the right angle.

Q. When the "Concord" and "Kaimiloa" were observed by you rising and falling, how high was that swell in feet?

A. It would only be a guess if I ventured an ascertainment, but they were doing considerable rising.

Q. And did you observe any strain upon their ropes?

A. Yes, a violent strain. I think while I was there one of the lines parted.

Q. More than one?

A. I think at the time I was there there was one.

Q. Did you see any damage done when that occurred, bumping either the "Kaimiloa" or "Concord" against the "Celtic Chief"?

A. No, there was no damage occurred to either vessel while I [3338—2507] was there.

Mr. WEAVER.—That's all.

Redirect Examination of N. WATKINS.

Mr. OLSON.—You were asked a question how long it would take to dissolve a hundred pounds of nitrate of soda in a hundred pounds of water at the temperature stated 78° or thereabouts. Have you ever made any practical test either incidentally or for the very purpose to see how long it takes to dissolve sulphate of potash?

Mr. WARREN.—Object to that as improper re-

(Testimony of Norman Watkins.)

direct, if the Court please.

I'd like to move to strike all testimony of this witness with respect to nitrate of soda upon the ground it is incompetent, irrelevant, and immaterial.

The COURT.—The motion is denied and I allow the question.

A. In answer to that I would say that I have made a great many analyses of both nitrate of soda and sulphate of potash, and the customary procedure is to weigh out a certain amount, in the case of nitrate of *said*, as a rule, ten drams or nitrate of soda and put it in three hundred centimeters of water and give it a shake and it's gone. In putting sulphate of potash into solution, it is necessary before you can get it into solution, it is necessary to boil for half an hour.

Q. Now, then, Mr. Watkins, will you state whether or not water is more active as a solvent at a high temperature, that is, I mean at a high state of heat, or at a low temperature? At which is it the more active as a solvent, at a high or a low temperature?

A. It is more active at a higher temperature.

Q. That is to say, if the water is boiling it is much more active [3339—2508] than if it is cold?

A. Much more active, but much more active in some cases than others. You take common salt and hot water, there is very little difference in the salt between hot and cold water in common salt but there is a vast difference in nitrate of soda.

Q. How about sulphate of potash?

A. Quite a little difference in sulphate of potash.

Mr. OLSON.—I think that's all.

(Testimony of Norman Watkins.)

Recross-examination of N. WATKINS.

Mr. WARREN.—I'll ask you, Mr. Watkins, how long would it take to dissolve sulphate of potash in water at 78°, 13 parts of sulphate of potash to one hundred parts of water.

A. I should say it would take at least an hour.

Q. And if the quantity of water were doubled, would that make any difference?

A. It ought to go into solution quicker.

Q. About how much quicker, half the time?

A. No, I couldn't. I wouldn't venture an assertion of the ratio.

Q. That would depend upon the size of the crystals?

A. That would have some bearing on it.

Mr. WARREN.—That's all.

Re-redirect Examination of N. WATKINS.

Mr. OLSON.—That's all. Just a moment. I have one point that I want to see whether I want to ask a question on.

Q. Assuming a vessel like the "Celtic Chief" full of or laden largely with sulphate of potash, if there were a leak admitting the salt water at its ordinary temperature that would bring a comparatively small quantity of water, would it not, in contact with a large quantity of sulphate of potash?

Mr. WARREN.—I object to the question on the ground it is improper *cross-examination*.

Mr. WEAVER.—I make the same objection.

Mr. OLSON.—That's all.

Recess. [3340—2509]

Mr. OLSON.—If the Court please, the testimony

that I have already offered completes the testimony which I wish to offer, with the exception of A. W. Keetch, an engineer, on the question of propellers.

The COURT.—I will grant the motion as to that part of Mr. Barrett's testimony, page 7, reading as follows: Beginning with the words "and broken her all up," and the words, "she would have listed in no time if there had not been a towboat holding on to her."

As to the point you made that this all should be stricken out because the later part shows that the answer is all based on the reporter by the commander and we don't know what that report is, I overrule the objection.

Mr. WARREN.—I now move to strike the answer of the witness Connemann to direct interrogatory number 38, upon the ground that he is not qualified by knowledge of the facts in the case to answer that question and the answer further doesn't show that he has such knowledge.

Mr. WEAVER.—The Miller Salvage Co. makes the same objection. The Miller Salvage Co. withdraws its objection.

The COURT.—I have ruled that the witness is qualified as an expert and also have overruled the motion, denied the motion.

The COURT.—I am going to deny the motion, that being #13-X cross-interrogatories propounded by Miller Salvage Co.

Mr. OLSON.—That's the deposition of Lieutenant Connemann.

The COURT.—I'll deny the motion as to that. Motion to strike answer to cross-interrogatory 19-X

(Testimony of John William Smithies.)

propounded by the Miller Salvage Co. in the deposition of Captain Connemann. [3341—2510]

Friday, February 16, 1912.

[Testimony of John William Smithies, for Libelee.]

Direct examination of JOHN WILLIAM SMITHIES, a witness called on behalf of libelee, and sworn.

Mr. OLSON.—Q. What is your full name?

A. John William Smithies.

Q. Smithies? A. Yes, sir.

Q. Where do you reside? A. In Honolulu.

Q. What was your business or occupation in March of 1906?

A. I was clerk for Jas. F. Morgan.

Q. And Mr. Morgan was then—

A. In the auctioneer business and commission.

Q. Who was Mr. Morgan's salesman at that time?

A. O. H. Stevens.

Q. Do you remember a transaction in that month, or in the Spring of 1906, involving the sale of a windlass which had been put into the hands of Mr. Morgan by Captain Wiesbarth and sold to Captain Miller? A. Yes, sir.

Q. Will you state—you are familiar with the transaction itself, the actual sale? A. Yes.

Q. What was the amount that that windlass was sold to Captain Miller for? A. About \$105.00.

Mr. OLSON.—That's all.

Cross-examination of JOHN WILLIAM SMITHIES on Behalf of Libellants Miller Salvage Co., Ltd.

Mr. WEAVER.—Q. Have you memorandum of

(Testimony of John William Smithies.)

that or independent memory of that figure?

A. Memory myself?

Q. Yes. A. No, sir.

Q. Have you any memoranda of that \$125.00?

[3342—2511]

A. By looking up the books.

Q. Where did you get the figure?

A. I got it from Morgan's books.

Q. You know it yourself? A. Yes.

Q. Do you know independently of the books?

A. No, sir, not independent of the books because that's 1906.

Q. When you say it sold for \$105.00 you depend upon looking in Mr. Morgan's books? A. Yes.

Q. But you yourself do not know about it?

A. I think I remember a receipt given to Miller for \$105.00.

Q. Have you seen that? A. What?

Q. Have you seen that signature, your receipt given to Miller for \$105.00.

A. I haven't seen the receipt; that's five years ago.

Q. Then the only means of information is the memorandum in Mr. Morgan's books?

A. Yes. By looking it over it refreshed my memory.

Q. Who kept the books?

A. Mr. King. G. W. R. King was the book-keeper; if I'm not mistaken you had an office there too.

Q. I had an office near by.

A. But you knew we were handling Wiesbarth's affairs.

(Testimony of John William Smithies.)

Q. I'm asking you how you know of that sale?

A. I simply looked up the books.

Q. Did you yourself make any entry of that \$105.00?

A. If I'm not mistaken, that's some years ago; King was keeping Mr. Morgan's books when he came down after he finished his work at four o'clock.

Q. Then you have no memorandum of your own?

A. I have no memorandum of my own.

Q. Did you see that entry? A. Yes.

Q. I thought you said Mr. King was the book-keeper?

A. I gave him a memorandum of the sales and he made the entries.

Q. You don't remember giving him that memorandum? A. I do. [3343—2512]

Q. Independent of any transaction or is it because it is in the general course of business?

A. In the general course of business. When he comes he asks me for the charges. I give it to me.

Mr. WEAVER.—Move to strike the testimony out as hearsay.

Mr. OLSON.—I offer to show by Mr. King who is here that the entry was made correctly in the manner that Mr. Smithies has testified.

The COURT.—I can't strike the evidence out, but I don't take it as established yet.

Mr. OLSON.—Where is Mr. Stevens at the present time? A. At the present time?

Q. Yes. A. Manila.

Q. He is not in Hawaii?

A. No, sir. Philippine Islands.

Q. You were the one who handed this information

(Testimony of George W. R. King.)

regularly to the bookkeeper? A. Yes, sir.

Q. And you knew the sale took place? A. Yes.

Mr. OLSON.—That's all for Mr. Smithies.

Mr. WARREN.—No questions.

[Testimony of George W. R. King, for Libelee.]

Direct examination of GEORGE W. R. KING, a witness called on behalf of libellee, and sworn.

Mr. OLSON.—Q. Mr. King, your full name, please? A. George W. R. King.

Q. And where do you reside?

A. Honolulu, Kaimuki.

Q. Do you know—that's on this island, is it not?

A. Beg pardon?

Q. Kaimuki is on this island, is it not? A. Yes.

Q. Do you know Mr. Jas. F. Morgan of Honolulu?

[3344—2513] A. I do.

Q. Will you state whether or not in 1906, in the early part of 1906, you were in any way connected with Mr. Morgan?

A. I was keeping Mr. Morgan's books at the time.

Q. Do you know Mr. Smithies, who was then employed by Mr. Morgan? A. I do.

Q. I'll hand you a book which I have in my hand. I'll hand you a book which has on the outside the following data: Journal, January 3, 1905 to April 10, 1906, and ask you if you recognize that book.

A. I do.

Q. I call your attention to page 364—no, I'll ask you first, what is that book?

A. That's Mr. Morgan's journal.

Q. And you recognize that as such? A. I do.

Q. Turn to page 364 of said book, having at the

(Testimony of George W. R. King.)

top of the page, the following words, March, 1906. Calling your attention to the first item under date of March 31, 1906, I'll ask you if you recognize that handwriting. A. Yes.

Q. In whose handwriting is that?

A. In my handwriting. This is the journal. They had what they called a blotter journal. I would call there for all entries from the blotter journal. I took items of this kind and entered them.

Q. Do you know whether or not Mr. Smithies made entries in that blotter journal?

A. Mr. Smithies did make entries.

Q. This might have been made by Mr. Smithies?

A. Might have been.

Q. He might have given you that item?

A. I found it in the book.

Q. Who made the entry in the book?

A. Mr. Morgan presumably and possibly Mr. Smithies.

Q. I'll ask you whether or not that blotter record is kept? A. They are kept.

Q. Can you produce it?

A. I could if I went down in the storehouse.

[3345—2514]

Q. I didn't think that they kept those books.

A. I think they were not destroyed.

Q. Mr. King, I'll ask you *if will* be good enough to go over Mr. Morgan's books and see if you can find that blotter journal. And I now ask, subject to its being stricken later, if that cannot be produced, that I be permitted to go on. Mr. King, is this entry here a correct entry made from the data that was

(Testimony of George W. R. King.)

given to you at the time? A. Undoubtedly.

Q. I'll ask now to be allowed to read this into the record. The entry being, is it not, Mr. King, as follows: March 31, 1906, Miller, Captain, Debtor, \$105.00, merchandise; kind, one windlass bought from windlass?

A. One windlass bought from Weisbarth.

Q. That's a correct entry?

A. That's a correct entry.

Mr. WEAVER.—Move that the offer be refused on that ground that it is not the best evidence.

Mr. OLSON.—I just want to ask one more question.

Q. You can find that book in Mr. Morgan's records if it is there. You know as much about it as anybody and can find it.

A. No, I do not. As I say, I was only there in the afternoons, and the disposition of those books were left in Mr. Smithies' hands, and as fast as they were finished up they were put in the warehouse.

Q. Kindly make a search yourself, and have a man in Mr. Morgan's office, his present man, Mr. Schwarzberg or Mr. Fleming, come up with you.

. [Testimony of Alvin W. Keech, for Libelee.]

Direct examination of ALVIN W. KEECH, a witness called on behalf of libellee, and sworn.

Mr. OLSON.—I'll admit, if the Court please, that the Inter-Island [3346—2515] Steam Navigation Co., in the course of the operations in connection with the "Celtic Chief" while on the reef outside the harbor of Honolulu, consumed extra fuel, fuel consumed because of the operations in connection with the "Celtic Chief," to the value of \$1,000.00.

(Testimony of Alvin W. Keech.)

Mr. WEAVER.—On behalf of the Miller Salvage Co. I make the same admission.

Mr. OLSON.—Will you state your full name, Mr. Keech?

A. My full name is A. W. Keech or Alvin W. Keech, is my full name.

Q. Where do you reside, Mr. Keech?

A. Honolulu.

Q. What is your profession?

A. I'm a general engineer.

Q. Will you state what training you have had?

Mr. WARREN.—I will admit, as far as I am concerned, that Mr. Keech is an expert in his line.

Mr. WEAVER.—I make the same admission.

Q. Mr. Keech, as a general engineer, have you ever made any special study of marine engineering?

A. That is where my training has been, along that line altogether, and I am licensed by the United States. I have a chief engineer's unlimited license.

Q. You know what is meant by actual or useful thrust in connection with the engine of a vessel transferring power by means of its propeller or propellers? A. Yes.

Q. I would like to have you explain to the Court what is meant by actual or useful thrust.

A. You want me to explain at length.

Q. Yes, explain so that the Court will understand what is meant by that term.

A. The power exerted within a vessel is called the indicated horse-power; that consists of a number [3347—2516] of factors, one of which is pressure and the other distance and another time. Those

(Testimony of Alvin W. Keech.)

make the indicated horse-power. Now, in transferring those, they are transferred, theoretically in the calculation to the propeller to overcome the resistance of the ship. There is friction, first the unloaded friction of the machinery that is present all the time; then there is the loaded friction; then there is the suction friction on the propeller and the inefficiency of the propeller.

Q. Assume that you had a vessel working by means of an engine transferring its power to a propeller which is working in the water and the vessel is tied up to an object lying quiet, we'll say on the wharf, how will you ascertain, or what will be the result of your experiment or test in ascertaining what the actual power of that engine is?

A. Well, there is only one way to determine that, and that is to put a —— If you have a vessel hitched to a post on the wharf, you have a —— on the rope, and that will tell you the number of pounds there which is the ordinary or actual—

Q. That is to say, it is an instrument which forms a link in the cable from the vessel?

A. I read off the pressure.

Q. Do you mean by that, Mr. Keech, that the amount indicated by the —— is equal to the weight of the object which is being pulled on?

A. It wouldn't drag it, but if you add a fractional more pull it would force the weight off the wharf.

Q. Then, if your —— registered five tons, that would mean, would it not, that just a trifle more power than is necessary to show five tons would pull a five-ton object off the wharf?

(Testimony of Alvin W. Keech.)

A. It would raise it slowly.

Q. Now, then, Mr. Keech, it has been testified in this case by Engineer Lycett of the steamer "Helene," that while he was on duty on the "Helene," while she was pulling on the "Celtic Chief," the following figures were correct representing the utmost that the vessel was doing at the time that he was on duty: Indicated [3348—2517] horse-power, 470 at the utmost; pitch, 9 feet, 6; revolutions, 117 at the utmost, tied up, per minute; revolutions at the utmost, running free, 126 per minute; gauge pressure, 160 pounds; and diameter of the propeller, 8 foot, 3, being one propeller. Mr. Lycett did not testify as to the diameter of the propeller, but I understand now that counsel for the Inter-Island Steam Navigation Co. admits that the diameter of the propeller is 8 foot, 3, of the "Helene."

Mr. WARREN.—That has been given me by the chief engineer of the vessel.

Mr. OLSON.—Then it is admitted by counsel that the diameter of the propeller is 8 foot, 3.

Mr. WEAVER.—I admit that.

Mr. OLSON.—And you will admit that, Mr. Warren?

Mr. WARREN.—Yes.

Q. If you will state, Mr. Keech, what, according to those figures, is the actual thrust in pounds?

A. I have either to do it here or refer to my notebook. I have done the problem. That's the "Helene"?

Mr. OLSON.—That's the "Helene."

A. What is the pitch of that propeller—9 foot, 6?

(Testimony of Alvin W. Keech.)

Q. Nine foot, six.

A. Running free, that indicated horse-power is stated to me now as 470?

Q. Yes.

A. Well, there is no statement made whether that is towing, pulling, or running free. I suppose that's running free.

Q. The indicated horse-power of the vessel, when given, is running free.

A. I assume running free, 470 is the horse-power running free with the revolutions 126; I've taken the maximum because I want to say that vessels are at such a disadvantage that I'm inclined to be lenient with them. There is such a disadvantage that you can't give them any too much. 470 and 126 revolutions you would have three tons and twenty-six [3349—2518] one-hundredths.

Q. And 26/100? A. 26/100.

Q. And the maximum thrust tied, or towing with that horse-power would fall away due to the revolutions being 117? A. Yes.

Q. 436 would be the horse-power and the calculation, then, would bring out, using 436 horse-power and 117 revolutions, would give you three ton, point naught eleven short tons.

That's useful thrust, three point eleven?

A. That's useful thrust.

[**Testimony of G. W. R. King, for Libelee.**]

G. W. R. KING resumes stand.

Mr. OLSON.—Q. Mr. King, have you found the blotter copy to which you have referred?

A. I have.

(Testimony of George W. R. King.)

Q. I now hand you a book and ask you if that is the book to which you refer.

A. That's the blotter of that date.

Q. Referring to page 178 of said blotter copy, the item at the bottom of the page under March 31, 1906, Captain Miller, debtor merchandise account, windlass from Captain Wiesbarth, 105.00, is that the item to which you referred? A. That is the item.

Q. In whose handwriting? A. Mr. Morgan's.

Q. Where is Mr. Morgan at the present time?

A. In San Francisco, I believe.

Q. He's not in the Territory of Hawaii?

A. Not in the Territory.

Q. Is that a correct entry? Is this a book which is used in the regular course of Mr. Morgan's business? A. It is a rough entry during the day.

Q. And the bookkeeper enters it up at night?

A. This E is made showing that I made the proper entry in [3350—2519] the proper book.

Mr. OLSON.—I ask that be allowed in evidence, if the Court please. It is an entry made in the regular course of business.

Mr. WEAVER.—I object to that as hearsay evidence.

I withdraw my objection to the item.

Mr. OLSON.—The item reads as follows: This is correct, is it not, Mr. King. March 31, 1906, Captain Miller, debtor merchandise account, windlass bought from Wiesbard, \$105.00?

A. That is correct.

Mr. OLSON.—That is all. Now, if you will come, Mr. Keech.

[Testimony of A. W. Keech, for Libelee.]

Continuation of Examination of A. W. KEECH.

The WITNESS.—I want to explain that this actual thrust, as I said, was derived from subtracting or using a percentage of the indicated thrust, and that is used by authority. Experiments and practice has established it and we refer to Seeton's Manual and Haughton's Handbook, which I have here. Those have been admitted and used all the time as the standard works on this force and deduction. I have used the smallest deduction, less favorable to the vessel.

Q. Now, what is that percentage?

A. 50%, that is given by Kent. I haven't mentioned Kent who is the most conservative of the three and is not a good authority.

Q. Will you kindly refer to Seeton and Haughton?

A. I want to say that the proper deduction, the one mostly used is—

Q. What would the percentage be if you took the one ordinarily used, not the most favorable?

A. It would be considerably less than that I mentioned here this morning.

Q. Than three tons?

A. Than the figures that I'm giving.

Q. That is than 505? A. 50%. [3351—2520]

Q. But it would be reduced?

A. In the proportion that I used, 37 to 40. Of course it varies according to the quality of the machinery. I should say 45 is, would be correct.

Q. Kindly refer to Seeton and show your authority for that.

(Testimony of A. W. Keech.)

(Witness refers to book.)

A. Shall I read it?

Q. Yes, read from Mr. Seeton.

A. Yes, this is Seeton's Manual of Marine Engineering, A. E. Seeton.

Mr. WARREN.—What page is that, please?

The WITNESS.—That is 292. It shows there they have very carefully investigated,—that only 37 to 40 per cent of the whole power is ordinarily employed and the fraction is equivalent to from $\frac{1}{8}$ to $\frac{1}{6}$ of the gross load on the engine when working at its maximum speed and power.

Q. Now, will you refer to Haughton and show the same thing?

A. Here's an example. This is an example worked out.

Mr. WARREN.—What page is that, please?

A. Page 347. On page 349 you have the case of a steamship. It is found that only about 38% of the indicated horse-power is effectively applied to the turning force of a steam propeller in propelling the ship. That's on another page in another example.

Q. Now, then, Mr. Keech, I'll ask you whether or not you have figured—I'll assume this figuring, then, at the rate of 50% as being the actual or useful thrust, that giving you 3.11 tons when she is running tied up? A. Yes.

Q. Do you mean by that, then, that the power is equal to the weight of a block 3.11 tons at the other end of the rope being lifted?

A. It just balances.

Q. So it would require a little more power in order to lift that?

(Testimony of A. W. Keech.)

A. Yes, you have thrust balancing weight.
[3352—2521]

Q. There would be—state whether or not with a vessel like the "Helene" pulling on the "Celtic Chief" which is aground and not yet floated, exerting the power of these figures that I have given you, would it be calculated as tied up or running free?

A. Tied up.

Q. That's what you mean by tied up?

A. Yes, the "Celtic Chief" is a fixed object, an object ashore, and the vessel is pulling on her she would be like a post on the wharf.

Q. And the power exerted is transferred into what? Dynamic force or static force?

A. Static.

Q. It only become dynamic when the object becomes free?

A. Then it becomes thrust into speed.

Q. Is there any difference between the propellers of a vessel which is used for towing purposes and a vessel which uses her propellers particularly for the purpose of carrying the vessel itself through the water, like a steamship? Is there any difference between the propeller of a tug boat and a steam ship?

A. Every vessel that's built is carefully considered with that in view and even the ship is carefully considered, and—that is, the propeller is considered according to the work she has to do and the man that can get nearest to it is the cleverest marine engineer.

Q. Now, does the propeller of a tugboat differ from the propeller of an ocean going steamer?

A. Well, they generally have less pitch so they are

(Testimony of A. W. Keech.)

not hampered when they're tied up by that slowing down of the engine; they get a shorter ——— which enables them to have a greater leverage.

Q. Now, how does the diameter compare or is there any difference in the diameter?

A. The diameter is always considered in regard to the vessel; and one thing is the cross-section [3353—2522] of the vessel, midship section has something with it, but there're so many things that enter into it that regulate the diameter of the screw, but the diameter has a good deal to do with the efficiency of the screw.

Q. That is of these particular vessels?

A. Any vessel, any particular vessel. And I wish to say that if her condition changes as to towing or running free or any change of her method of her towing, the diameter has a definite influence on it within limits.

Q. I'll ask you, Mr. Keech, if you have figured the useful thrust of the pulling according to the following figures: Indicated horse-power, 500; pitch, 9-foot, 5; revolutions, 137, running free; under the pressure, 160?

A. No, I haven't that horse-power. I don't have that.

Q. You do not have that?

A. What is the horse-power?

Q. Could you figure that?

A. Well, it would take quite awhile.

Q. Never mind now, then. Coming, then, to the "Mikahala," assuming the "Mikahala" pulling on the "Celtic Chief" under the same conditions that

(Testimony of A. W. Keech.)

I have described with reference to the "Helene," with a horse-power of 404, pitch 13 feet, revolutions running free 87 and tied up exerting the greatest power that she was exerting upon the "Celtic Chief" at the time according to Christiansen, the engineer of the "Mikahala," 70, and the diameter 9 feet, 6, 9 feet, 8; diameter of the propeller 9 feet, 8 and the pressure 70 pounds?

A. I have two pages worked out here from 404 indicated horse-power, 87 revolutions, 13 pitch; then I have worked back from there to a horse-power 305 and have worked it out at 65 revolutions and the "Mikahala" tied is two pounds, point 977.

Q. 2.977 tons?

A. And free, 2.946. She has less thrust running free, she pulls better, has less thrust running free than when hooked on according to that which is sometimes the case. [3354—2523]

Q. According, then, to the figures that you have given to you, Mr. Keech, the "Mikahala," the "Mikahala's" power tied up would be, that is, it would just balance a block attached to the end of a rope running a fraction over a weight of 2.977 tons, and running free a trifle less.

A. I want to say in practice, if you were to get down there and do that it wouldn't do it.

Q. You figured that on 505?

A. I doubt whether she would do it.

Q. Now, I'll ask you, Mr. Keech, with reference to the "Likelike" operating under similar conditions according to Engineer Strolhin and Faneuf, also engineer of the "Likelike," the figures being as fol-

(Testimony of A. W. Keech.)

lows: Indicated horse-power, 340; pitch, 8 feet and a quarter and a half inch.

A. 8.25 gives 3 inches, 8 feet, 3 inches

Q. 8 feet, 3 inches; revolutions, running free, the maximum, 138x and tied up, using the power that she was using that night on the "Celtic Chief," 100 per minute. A. Yes, I have that.

Q. And her diameter, the diameter of the propeller, 8 feet, 3, and the gauge pressure, 150 pounds?

A. The gauge pressure doesn't matter as the indicated horse-power has been stated and that includes the gauge pressure.

Q. Now, then, will you state what is, first, the useful thrust tied up and then, what it is running free?

A. Running free I have figured that and found it to be two tons, point 463.

Q. That's running free? A. Running free.

Q. Then tied up?

A. Tied up, two tons, point 56; short tons.

Q. So the "Likelike" could operate at better advantage tied up?

A. Well, she seemed to. They do sometimes. You see, running [3355—2524] free they produce a slower effect in speed until she looses thrust.

Q. You made these calculations in the same way that you have done the other, with 50% deduction?

A. Yes, they are all 50% deduction.

Q. Taking the "Mauna Kea," the "Mauna Kea" having an indicated horse-power of 2400; pitch, 15 feet, six inches; revolutions, 105, that's running free. Can you state from those figures what her thrust is, useful thrust running free and tied up?

(Testimony of A. W. Keech.)

A. I can only give it as it's given here. Running free—

Q. Oh, I'll ask you whether it will be true that her towing power will be equal to her running free? Could the thrust given her, that I'll give you again be taken as true unless you put a dynameter on?

A. The thrusts I'm giving you here are as near as you can get them, and running free or tied up, it will be close to it. The "Mauna Kea" has an actual thrust of 12 tons, point 165.

Q. And that is figured on a 50% deduction; 50% basis? A. 50% basis.

Q. But it would be correspondingly less if you figure it as stated by Haughton or Seeton. I'll ask you about another thing Mr. Keech. You were formerly, were you not, in the stevedore business?

A. I was part owner of what is now the McCabe, Hamilton & Renney Co.

Q. As such were you famaliar with donkey-engines in use here in Honolulu?

A. I owned them, rented them and sold them.

Q. Do you know whether or not any of those donkey-engines that you had were sold?

A. I think some of them.

Q. You have seen donkey-engines from time to time during the last two or three years?

A. Yes, I know they're here as well as I know there is money here.

Q. I'll ask you whether or not you know whether or not McCabe, [3356—2525] Hamilton & Reney have donkey-engines having a horse-power of forty-five or over?

(Testimony of A. W. Keech.)

A. I should say there are, at least the double ones.

Q. McCabe, Hamilton, & Renney have donkey-engines of that kind for hire?

Mr. WARREN.—I would like to interpose an objection on the ground it is incompetent, irrelevant, and immaterial.

The COURT.—I overrule the objection.

Mr. OLSON.—Answer the question.

A. The question was?

Q. Whether there were such, whether such engines could be hired in Honolulu? A. Yes.

Q. I want to know, Mr. Keech, if you know that McCabe, Hamilton & Reney have engines now which they had then, of that character?

A. Oh, yes, I know that.

Q. Do you know of any other concern in town—I'll ask you this Mr. Keech, when did you sell out to McCabe, Hamilton, & Reney?

A. That was back, I suppose more than twelve years ago.

Q. And I will ask you whether or not the engines which you sold out to McCabe, Hamilton & Renney included any engines of that power or more?

A. Yes.

Q. Now, I'll ask you, Mr. Keech, whether you know of your own knowledge whether or not during the *lat*, we'll say in December, 1909, there were besides the engines of McCabe, Hamilton and Renney, other engines available in Honolulu for hire of forty-five horse-power or more?

Mr. WARREN.—I object to that question. This question assumes something that has not been testified to.

(Testimony of A. W. Keech.)

Mr. OLSON.—I'll say I'm excluding McCabe, Hamilton & Renney, and I'm asking Mr. Keech now if there were any other engines.

A. I know, but probably not definite enough. I don't have the size of them. [3357—2526]

Q. I'll ask you if there were engines in Honolulu at that time of that power or more which were available.

A. To the best of my knowledge and belief there have been engines of that kind ever since, it would have to be, the work couldn't proceed without them.

Mr. OLSON.—I think that's all.

Cross-examination of A. W. KEECH on Behalf of
Libellants Inter-Island Steam Navigation Co.
and Matson Navigation Co.

Mr. WARREN.—Q. You can't say, Mr. Keech, and be sure about it, that in December, 1909, McCabe, Hamilton, & Renney did, as a matter of fact, have engines of this power and under which could have been had at that time?

A. I couldn't definitely go into detail about the question. Of course, that's one of those things that I couldn't, I don't know, that anyone outside of the management of the concern could say definitely.

Q. And your personal acquaintance with the affairs and the stock of McCabe, Hamilton & Renney terminated, you say, about twelve years ago?

A. Somewhere along there.

Q. I'll ask you to the best—can you recall any particular place or firm where such an engine, in your judgment, could really have been obtained in December, 1909?

(Testimony of A. W. Keech.)

A. Well, I couldn't say particularly that there is any place, but I—no, not particularly. I couldn't go and put my hand on one, but I positively know that there were but not definitely where they were located.

Mr. OLSON.—Answer the question that Mr. Warren asked—what particular firm.

A. Including McCabe, Hamilton & Renney?

Q. Yes. A. Well, they had them.

Q. You don't know, as you have said, as a matter of fact, that they actually had those engines on hand?

A. Oh, yes, they had them because I think I saw them at that time. [3358—2527]

Mr. OLSON.—December, 1909?

A. I saw them working here on the deck.

Q. That is on different works out in the harbor?

A. Yes, all around here I saw them work. If it was longer than that, I've been away, but I was around here then and I saw them working.

Q. That is in December, 1909? A. Yes.

Q. Those that you saw were actually engaged?

A. Yes, they were engaged on the waterfront. Of course, the work couldn't proceed without them.

Q. Now, referring to the matter of the propellers and useful thrust, will you state the formula which is used for calculating the indicated thrust?

A. The indicated thrust? After finding the horse-power, indicated horse-power which is in pounds, the indicated thrust is the pressure on the thrust multiplied by the speed, which is pitch and revolutions divided into pounds of the indicated horse-power, gives you the indicated thrust.

(Testimony of A. W. Keech.)

Q. So that you would write that formula this way, indicated horse-power times 33,000 pounds to be divided by pitch times revolutions; that gives you thrust in pounds which answer you reduce by this 50% to eliminate the useful thrust, indicated thrust and useful thrust; so that that formula applies to any state of figures which give those, indicated horse-power, pitch and revolutions.

A. It is the formula generally used.

Q. That is the regular formula?

A. Regular formula.

Q. In speaking of a vessel running free, that means going at her full speed under normal conditions; that is, theoretically the conditions are all perfect; there are no factors interfering with any one or more; theoretically, you have a vessel going full speed in still water, and all these different factors unhampered by the things that actually do hamper?

A. Running free.

Q. When you are given in a formula a vessel is making so many [3359—2528] revolutions, if that happens to be her number of revolutions at full speed only, your calculation is based on her running full speed and free?

A. I have assumed that this is at full speed, running free because I know, I was superintendent, the "Mikahala" was under my supervision for a long while as a superintending engineer and I know that 404 horse-power is the horse-power given by the indicator at full speed.

Q. Now, you tell us, you have, to a certain extent,—what is meant by suction friction?

(Testimony of A. W. Keech.)

A. Well, there are two suction frictions in any vessel. Dragging through the water is suction friction which is between the water, and the suction *which due* to involuntary force and the pressure on the side and several other things, but the suction friction that I referred to was the suction friction on the plate, on the surface of the plate, which is considerable. There is a note here giving it as two and one-half pounds to the square foot in very good surface.

Q. Then this matter of friction depends upon the condition of the hull, whether it is clean or not?

A. Yes. The suction friction of the hull depends upon her depth or length, but the suction friction of the hull has nothing to do with the suction friction of the propeller.

Q. In moving through the water, supposing your vessel is running free, is there a certain amount of resistance by the force created?

A. That is one of the factors that they try to eliminate.

Q. That is something which would not exist if the vessel were pulling tied up?

A. That still exists; the tendency isn't so much but the water passes by the vessel. She has the same suction friction; that is, a smaller suction friction, although it is different in quantity, but the effect is the same. The stream running aft goes through the same performance as it would if the vessel were running free. [3360—2529]

Q. Now, taking these calculations that you've made. The theory of them is that you are in smooth water and pulling on something taut? A. Yes.

(Testimony of A. W. Keech.)

Q. Is there any difference in a vessel operating in still water under those conditions and operating in an open sea where the water is rough and there is a swell?

A. There is a difference, of course, because the conditions are different. If there is a rough sea, she has all to do to maintain herself from going astern; she may use up all her power keeping in position.

Q. When she's operating against the swell, is the tendency of the swell to throw her back?

A. Yes, everything, any disturbance in the direction.

Q. And when the swell passes if she is thrown back and goes forward is there any difference in the strain she is putting on that line? A. Yes.

Q. At that time?

A. There is quite a strain heaving on the line. It is not a useful strain; it's a line-breaking strain, and not a pulling strain on the vessel. If you could have that swell from allowing that force to be exerted then it would help the line, but the swell throwing the vessel rapidly ahead is a line-breaking strain, but not an effective strain, although I admit that it does sometimes help a little, not much. The tendency is more to break lines than it is to have the effect.

Q. Don't you know, as a matter of practice, that it is often by jerking on a line the only way to start a vessel?

Mr. OLSON.—I object to that, if the Court please, on the ground that there is nothing in the evidence assuming anything of the sort.

The COURT.—Objection overruled.

Q. A jerk of that sort is often best to accomplish

(Testimony of A. W. Keech.)

exactly what they are after, making a start?

A. It is often tried, but I don't know how often it has any [3361—2530] effect. It's tried because it is always tried, but where the mass inshore is small and the force outside great, then the chances of moving the mass inshore are greater, but where the mass inshore is big and the force outside small, then the chances of moving it with a jerk is not so great. It might be, I won't say it mightn't be, but the chances of moving a big mass with a vessel afloat, the small vessel afloat, wouldn't be so many.

Q. You personally haven't had experience with doing that?

A. Yes, I've had experience. I've not had command, but I was present, I was interested in cases.

Q. This was tried? A. Oh, yes.

Q. When that is tried and the vessel comes forward making a jerk showing a greater power, about what is the increase of power that is put on?

A. That is a thing that I couldn't answer and I think you couldn't get any one here to answer. I'd have to have instruments in the line; you'd have to make statements as to conditions, and I would have to make calculations from them.

Q. If it's full speed, it would be something like the weight of the vessel?

A. The vessel doesn't *weight* anything in the water.

Q. I mean the tonnage of the vessel.

A. The vessel and everything on her has no weight. It is mass and the boat is mass.

Q. So the force of that is also brought against the fixed object?

(Testimony of A. W. Keech.)

A. It's brought into the line. I don't want to tell you how much of it goes to the fixed object. There may be some of it go there, but it is exerted through the elasticity of the line without having any effect pulling unless the fixed object is small in comparison with the pulling object. There is no effect. I think it would have an inconsiderable effect on the inward side when the mass ashore is not too big.

Q. That is, assuming the pulling vessel to be small attached to [3362—2531] a hawser. Now, suppose the pulling vessel is itself secured by anchors out forward so that a swell does not appreciably drive it back, what difference then?

A. Then you negative the effect of the power and she is simply exerting her force, the force of her propeller.

Q. But if you're heaving on the anchor?

A. Heaving? That's not in my line. I don't know that.

Q. If you heave on the anchor?

A. Adds that much more force.

Q. If you are not heaving on the anchor, but the anchor line is simply taut, you simply stop?

A. You keep the vessel from going back; you keep the vessel steady and simply the condition so that there is no movement of the vessel and the propeller is exerting its thrust as if it were in still water.

Q. Does speed have anything to do with it? Does speed have anything to do with your calculations as to effective thrust with a vessel pulling at sea, say?

A. What speed?

Q. Speed. When you treat speed as a factor that means, of course, revolutions?

(Testimony of A. W. Keech.)

A. Well, you can have speed; the vessel running free is her speed; that is, her motion through the water is her speed. If she's tied up, the rate at which the water is moving by her sides due to her revolutions, that is her speed, too; that is, the vessel has no speed, but the water has a speed which gives the towing effect or the pulling effect.

Q. Well, thrust varies with the indicated horse-power?

A. Yes, of course, it has to, because it's one of the factors, it's one of the factors that balances outside force inside. When the indicated horse-power varies, there is thrust. When indicated horse-power ceases, thrust ceases.

Q. What about speed compared with indicated horse-power?

A. Indicated horse-power? You must have speed to have indicated [3363—2532] horse-power. You must have motion. You must have speed, either the speed of the vessel going through the water or the speed going astern.

Q. I'd like to have you explain this to me, then: Thrust varies with the indicated horse-power and conversely with the speed, therefore, but the thrust may rise considerably above the mean abnormal if from any cause the speed is reduced without a corresponding decrease in the power.

A. Yes, I'll explain that. You see, when I diminish horse-power that very effect brings the thrust up, brings it up to equal the horse-power running free. When I diminish the horse-power here from 400 and something to 300 and something, that very element brings the thrust up so it, at the diminished

(Testimony of A. W. Keech.)

horse-power equals the thrust at the higher horse-power.

Q. So that in towing there is an increase in the thrust?

A. No. Well, there is an increase in the thrust, of course, but not an increase over the thrust running free; not any appreciable increase of the thrust running free; but generally the way the propellers are affected here, the revolutions diminish horse-power, and it comes back again.

Q. So the difference in your calculation between running free and taut is covered by this?

A. That is, it always comes out that they're somewhere near alike. You'd have a horse-power pull down, the engine pulls down, but the thrust comes up through this peculiarity that you're mentioning. That is true.

Q. I understood you to say that when you had given the three factors, indicated horse-power and pitch and revolutions, you don't need to consider gauge pressure, because that is covered?

A. That is covered in the indicated horse-power. That's one of the factors in finding the indicated horse-power; that simplifies these calculations. If I hadn't had that I would have had [3364—2533] to go through, occupied more time.

Mr. WARREN.—I think that's all.

Cross-examination of A. W. KEECH on Behalf of
Miller Salvage Co.

Mr. WEAVER.—Q. Suppose the "Mikahala," the engine of the "Mikahala," were on a fixed place and exerting this power that you mention, would it have

(Testimony of A. W. Keech.)

a greater or less pulling power than you have given?

A. No, it wouldn't. If you've all the elements there that were given me, any position of the engine would be in that I know of wouldn't affect it.

Q. The element that I wish to call your attention to would be the power exerted on an engine on a fixed post like the rapid transit line and a vessel then exerting the power, would that make any difference in its pulling power?

A. It would be a radical change then, and you would come to an entirely different proposition.

Q. Would it be greater or less?

A. You could go to, you could exert any power possible.

Q. Then it would be greater and considerably greater?

A. If you were to use the "Mikahala's" engine as a donkey-engine.

Q. You have taken into consideration the fact that it is a power exerted on a floating vessel and in the water?

A. Yes, that is the only thing in question.

Q. If it were possible to get a foundation out there for these engines and use an engine out there and then exert the power—

A. Then the smallest engine, a one-horse engine if rigged proper with tackle would exert a power greater than all the steamships in Honolulu.

Redirect of A. W. KEECH.

Mr. OLSON.—Q. Then, Mr. Keech, following up Mr. Weaver's line of examination, [3365—2534] assuming that any one of these vessels had been

(Testimony of A. W. Keech.)

backed up against a fixed object, say that the propeller had backed up against a fixed post or wall, say, it couldn't turn; that is, there would be a very vast difference, would there not?

A. The engine would become useless as a marine engine, and you'd have *and you'd have* to rig gypsy-heads on it.

Q. If instead of force being transferred to the propeller, the propeller is made fixed, have it transferred to a gypsy-head, it would exert a greater force?

A. It would be indefinite, according to the rig you put on.

Q. According to the rigging?

A. According to the rigging, the block, the tackle. The "Mikahala" engine or any other engine couldn't pull on any more than—

Q. Depending on the tackles?

A. Depending on the tackles, only the bigger engine would get through sooner, but the smaller engine, they would all pull up at the same point.

Q. What would be the result if one man with ordinary man power were to pull on a cable transferred to a vessel ashore like the "Celtic Chief" for a long enough period of time; that is, as long a period of time as to create a strain.

A. There would only be a stated strain on the cable *do* to the man's power.

Q. And that is depending upon what? How far does that force extend?

A. It extends clean through the vessel, every animalcule of matter through the vessel is affected by it.

(Testimony of A. W. Keech.)

Q. You referred to the mass or size of the vessel ashore as having a bearing upon the effectiveness—you know the “Mauna Kea,” do you not, and the “Likelike,” and all these other vessels?

A. Yes, very well.

Q. What would you say about the force of the swell exerted upon a vessel of a tonnage of about 1700 tons and having a cargo in [3366—2535] her of about about 2500 tons, with reference to the effectiveness of the swell? Would that be such a large one or a small one so as to become classified among the large or small? A. That is, a vessel ashore?

Q. Having cargo of about 2500 tons.

A. That's all relative to force; that's coming to a—

Q. I'm not asking you to state exactly. I'm asking you whether you'd regard that as a large mass rather than a small mass.

A. It all depends upon what mass.

Q. I'm referring to the “Mauna Kea,” the “Helene,” and the “Likelike.”

A. There is a big difference in their mass. The “Mauna Kea,” with the swell, would throw considerable strain somewheres in between herself and that vessel ashore, but when we come to analyze that, if the swell was not high—

Q. I'm not asking you to give exact figures. She would come around if the swell were any—I'm asking you if any of those vessels could take a vessel ashore on the reef of the size that I've mentioned and the cargo that I've mentioned with the swell that you know prevailed or had prevailed ordinarily here, would that object be large enough so the swell would be material?

(Testimony of A. W. Keech.)

A. Well, the "Mauna Kea" might have some effect.

Q. You stated in your examination in your testimony in response to Mr. Warren's examination that a large mass ashore and the vessel outside towing being affected by the swell; the swell would not affect the vessel ashore very materially, and you used the terms large or small mass, depending upon the size of the vessel ashore. I'm asking you, assuming the ordinary swell that prevails out here under ordinary conditions, and assume ordinary vessels like the "Helene" or "Likelike" and the "Intrepid," do you know it? A. Yes.

Q. Assume vessels of that kind pulling on to the "Celtic Chief," [3367—2536] if she had, the mass of water has such an advantage, the influence of the swell would be comparatively small?

A. I think in the case of the "Mauna Kea" the swell would be material, some material assistance.

Q. But not the others?

A. No, the others are rather small. If the vessel was aground inshore and I was depending upon those swells and those vessels to pull that off—they are supposed to be loaded or empty.

Q. Assuming that they are loaded?

A. Well, it wouldn't amount to anything in my estimation. That is, I wouldn't like to depend on it to help me out.

Recross-examination of A. W. KEECH on Behalf of Libellants Inter-Island Steam Navigation Co. and Matson Navigation Co.

Mr. WARREN.—Q. Referring, now, to the "Celtic Chief" ashore, that would depend a great deal

(Testimony of A. W. Keech.)

how she is loaded, how far aground she is and the water around it?

A. I was presuming that she was high and dry.

Q. So that if she were not high and dry but had been in the water say three or four feet—

A. That's something else.

Q. That would necessarily have made a difference?

A. Every foot of water makes a difference.

Q. You say the effect of the swell in assisting the "Mauna Kea" would then be all the greater?

Mr. WEAVER.—I object to the question on the ground there is nothing in the testimony to show there is anything of the sort.

Q. It would make a material difference in the result? A. What's that?

Q. If she was afloat.

A. If she was altogether afloat?

Q. So that if she's ———, a swell might possibly raise her almost to the point where she'd float, then the swell would be of material assistance, would it not? [3368—2537]

A. It would be, but the vessel is generally throwing her inshore under those conditions; the swell doesn't affect her as much as it does the vessel towing.

Q. Does it make any difference?

A. A vessel like that aground has to be shallow to sustain a great swell.

Q. Still it would be a material assistance?

A. I wouldn't say it would be material. I wouldn't like to call it material.

(Testimony of A. W. Keech.)

Q. You don't think so?

A. I'm that liberal; I'm not here to hide anything or to find anything but just what is the fact in the case and I wouldn't like to admit that in a matter of that sort.

Q. I'd prefer your judgment to that of an expert navigator. A. I don't know.

Mr. WARREN.—That's all.

Mr. OLSON.—No further questions. I've closed with my case.

Examination of A. W. KEECH by the Court.

The COURT.—Q. Mr. Keech, will you explain again just what this 12.165 tons means?

A. It's the resistance of her propeller. That is a way to test the pull that she exerted on the line, on the tow.

Q. Now, I want to know what that power would be applied to, some object ashore for instance.

A. The same thing.

Mr. OLSON.—So, as I understand it, if there were actually 12 tons weight it would then require over 12 tons to bring it off.

Mr. WARREN.—I desire to offer in evidence, your Honor, according to promise heretofore made, a certified copy of contract for steamboat mail service between the United States and Inter-Island Steam Navigation Co., Ltd., over route #80,961, which I [3369—2538] will add is described in the contract as the route between Honolulu and Hilo and way ports, dated March 20, 1906, for a term ending June 30, 1910, which has been certified to as being true

by the chief clerk of the second assistant postmaster general, there appearing on page 3 of this document by the typewritten signature of W. S. Schallenberger, second assistant postmaster-general, the impress of a seal, purporting to be the seal of the post-office department of the United States of America and which reads, postoffice department, United States of America, and in the center the figure of a man on horseback.

Mr. OLSON.—I object to the offer on the ground that it is not an authenticated copy; further, on the ground that it is not the best evidence; further, on the ground that the certificate referred to by counsel is simply a statement reading as follows: True copy sent to second assistant p. m. general, it not being under seal and not purporting to be under seal, the seal referred to by counsel apparently being a part of the copy and being placed there to indicate the position of the seal to the original document, placed thereon by the officer of the Government signing the document on behalf of the document; and, furthermore, that the seal is found to entirely differ from the one on which the certificate appears.

Mr. WARREN.—Your Honor would make a ruling declining to receive it in evidence but marking it for identification?

The COURT.—Yes.

(Document received in evidence and marked for the purposes of identification.) [3370—2539]

I hereby certify that the foregoing is a full, true,

3344 *The British Ship "Celtic Chief" et al. vs.*

and correct transcript of my shorthand notes in the above-entitled cause.

Honolulu, T. H., July 30, 1912.

S. SOARES,

Official Reporter. [3371]

[Libelee's Exhibit "A."]

Capt. Hendry,
"Celtic Chief."

8/12/09.

Dear Sir:—

I desire you to let go from your present position as I want to make a good berth for the Man of War I do not wish you to cast off altogether and I will take your rope from some other part of ship trusting you will oblige me

Yours truly

(Sgd.) Capt. JOHN HENRY.

P. S.—Please let go as soon as you see the Man of War coming out.

(Sgd.) J. H.

[Endorsed]: No. 116. Libelee's Exhibit "A"
(Captain Henry). Filed Nov. 8, 1911. [3372]

[Libelee's Exhibit No. 4.]

Frederick C. Miller,

To

J. Metcalfe, Dr.

One Wooden Stock Anchor approximately

10,000 lbs. as agreed	\$650.00
2000 Feet 4 lbs. Wire Rope as agreed.....	250.00
1500 Feet 4¼ lbs. do do.....	300.00
700 Feet Galv. Wire Hawser do.....	250.00

Inter-Island Steam Nav. Co., Ltd., et al. 3345

1	Wire Cutter	do.....	10.00
1	Small Wire on Reel	do.....	75.00
20	Planks	do.....	20.00
10	Bdls. Oakum, as is	do.....	20.00
1	Rigging Screw	do.....	2.50
1	Blake Pump	do.....	800.00
2	18 Blake Wood Block	do.....	36.00

\$2413.50

Paid to H. Hackfeld & Co., Ltd., October 9th, 1906.

[Endorsed]: No. 116. Libelee's Ex. No. 4. Filed
Aug. 28, 1911. [3373]

[Exhibit "E".]

EXTRACT FROM TIDE TABLES, 1909,
DEPARTMENT OF COMMERCE AND LABOR.
December, 1909.

Moon.	Day. Week. S.	Month. 5	Time and Height of High & Low Water.			
			4:12	10:01	17:14	
			0:7	1.2	0.0	
E.	M.	6	0:29	5:52	11:00	17:41
A.			1.1	0.7	1.1	0.0
	T.	7	0:57	7:00	11:48	18:07
			1.3	0.6	1.0	0.0
	W.	8	1:28	8:00	12:30	18:37
			1.5	0.5	0.8	0.1
	T.	9	2:00	8:52	13:12	19:09
			1.7	1.5	0.7	0.1

[Endorsed]: No. 116. Exhibit "E" (Miller Salvage Co.). Filed Sep. 22, 1911. [3374]

[Title of Court and Cause—Nos. 115, 116, 117.]

[**Opinion.**]

L. J. WARREN (SMITH, WARREN & HEMENWAY With Him), for Libelants, Inter-Island Steam Navigation Company, Ltd., and Matson Navigation Company.

P. L. WEAVER (MAGOON & WEAVER With Him), for Libelant, Miller Salvage Company, Ltd.

C. H. OLSON (HOLMES, STANLEY & OLSON With Him), for Libellee.

Three libels *in rem*—of the Inter-Island Steam Navigation Company, Limited, claiming \$35,000 as compensation for salvage services, the Miller Salvage Company, Limited, claiming \$20,000 for similar services, and the Matson Navigation Company, claiming \$15,000 for similar services—against the British ship "Celtic Chief," her cargo and freight, are here consolidated for the purpose of trial. During the course of the hearing, the Inter-Island Company modified its claim to \$25,000 and the Matson Company its claim to \$10,000.

Each company libelant concedes that in addition to its own efforts in the alleged salvage operations, which effected the removal of the ship from a condition of stranding on a reef, some assistance was rendered by the other libelant companies and also "some very slight assistance" by a German cruiser the "Arcona," in whose behalf no claim for compensation is made.

In behalf of the ship, the claimant, her master, Captain Henry, contends that the Miller Company,

though having lightered 239 tons of cargo and rendered some service with its anchor and tackle in pulling the ship away [3377] from the reef when finally afloat, or in starting her toward deep water as she neared the floating, has forfeited any award by reason of the wilful misconduct of its superintendent, Captain Miller, in deliberately concealing from the other pulling agents, for at least two hours before the ship left the reef, his own knowledge that she was about to float free—that he and his company might have the more credit for her rescue. This point was not made in the claimant's answer, but is urged in his counsel's brief from certain evidence in the case. Other misconduct of the Miller superintendent, of which complaint is made, is his attitude, appearing from the evidence, with regard to the possible bumping of the "Arcona" by the "Celtic Chief" as she came off the reef—he desiring such collision as proof that the German cruiser was not pulling. And also the commencement of lightering operations without laying anchors to prevent further drifting aground, and the delay in bringing to the ship's assistance an available, large anchor of the Miller Company until the morning of Wednesday, two days later than agreed, are assigned as negligence.

The claimant contends that the Matson Company is entitled to no salvage, by reason of the want of success of the efforts of its tug the "Intrepid," and of the misconduct of her master, Captain McAllister, in refusing to obey the request of the "Celtic Chief's" master to yield the "Intrepid's" position to the "Ar-

cona," a more powerful vessel.

As to the Inter-Island Company, the claimant contends that its services were of the lowest order of merit, mere towing and lightering under conditions of no danger to [3378] either the salvors or the salved ship, and requiring no high degree of skill, and in which the salvors were actually negligent in beginning to lighter without having laid out anchors to prevent further drifting aground. However, there is conceded to the Inter-Island Company an award of \$4,379.77, being interest at 40 per cent per annum on the value of the property in use for the number of days each item was used, added to that company's own estimate of its expenses, \$3,561.77, i. e., only \$818 net for its services.

The claimant contends that, while the Inter-Island vessels and the Miller tackle did some pulling at the time the ship came off, one of the chief elements in her floating was the great strain on the lines of the powerful cruiser "Arcona."

The value of the "Celtic Chief," her cargo and freight money, is also made an issue. And with regard to costs, it is contended by the claimant that the three libelants should each bear one-third, in view of their exorbitant claims.

The facts, as found to be established by the evidence and by the admissions of the pleadings, are hereinbelow set forth.

At about 2:30 o'clock in the morning of December 6, 1909, the "Celtic Chief," bound from Hamburg, Germany, to Honolulu, with a cargo mainly of fertilizer and a small quantity of general merchandise, ran aground on a shoal reef about one-half mile

to the westward of the channel [3379] entrance to the Honolulu harbor. When off port early on the previous evening her master, Captain Henry, who was without experimental knowledge of Hawaiian waters, had been warned, by Captain Macaulay, the harbor pilot, of being too close to the reef, but this advice was not heeded, whereupon the pilot immediately boarded the ship and offered further advice, which, also, was not heeded until too late. And at 9 o'clock that night the ship ran lightly aground on this reef, where she remained in a calm until 2 o'clock the next morning, when an offshore breeze arising, she put on sail and endeavored to make the open sea, but had hardly gained headway before the breeze died down and left her in nearly the same position as before.

The reef in this locality runs east and west in ledges of coral rock, the outer ledge rising abruptly from deep water and extending back in a northerly direction on a plane of very slight grade for about a thousand feet to another ledge from two to four feet higher. The surface of the outer ledge presents patches of sand interspersed with hummocks of outcropping coral, some of them of boulder size. Though the sea-bottom here shows superficially more sand than coral, the dominant character of the reef is coral rock, somewhat sharp and of some degree of hardness, but at its surface not hard enough to withstand grinding under the moving weight of a vessel such as the "Celtic Chief."

The air continued calm until about daybreak of Monday. Thereafter a light southeasterly breeze prevailed instead of the northeast trades which blow

most of the year, but the indications, indeed immediate probabilities, were of [3380] a "kona" or period of southerly winds likely to blow strong and steady for several days, not uncommonly developing into a protracted gale. See *The Chiusa Maru*, 3 U. S. Dist. Ct. Haw. 366-367. A considerable but by no means extraordinary swell was striking the ship on her starboard quarter, and a current of from one to three knots per hour was running more directly against her starboard,—in other words, the current ran more from east to west and the swell more from south to north, the former more parallel with the reef, the latter more at a right angle with the reef. The southerly swell continued throughout the stranding, varying in height to an average maximum of about eight feet. One of the photographs in evidence forcibly bears out the testimony on this point. The swell broke on the reef somewhat further in than the ship, as is also shown by two of these photographs; and, of course, the sudden change of height of the plane of seabottom on going from deep water to the reef would tend to roughen the water in the vicinity.

For some time after both the first stranding and the second stranding, signal lights of distress were burned, but without response, and it was not until after daylight that help came, when, at about 6:30 o'clock, the Young Brothers' Launch "Huki-Huki" appeared. She exerted a pull on the stern of the "Celtic Chief" with a new 4-inch manilla hawser (manilla lines are herein measured by circumference, steel lines by diameter). but withdrew after about an hour. No claim is made in her behalf. At

about 7 o'clock there came [3381] the tug "Intrepid" of the libellant Matson Company, which after a few minutes' inconclusive dickering for terms of compensation gave the ship "Celtic Chief" a 12-inch manilla hawser about 100 feet long with a 1 $\frac{1}{8}$ -inch steel wire about 300 feet long attached to it, making a line of about 400 feet clear length. She towed more or less continuously until Wednesday noon. The tug's position was almost astern, her line attached to the ship's starboard quarter. The "Intrepid's" tonnage was, gross 123, net 55. Her engines were of 350 horse-power. No showing was made of the useful or effective thrust of her propeller. She carried 12 men including her master.

When the first assistance came, the ship lay headed in a northeasterly direction, making an angle of about 45 degrees with the reef, with her stern on its outer edge and her bow free, her starboard anchor down.

As the current and swell inclined to move the ship further on the reef and into a broadside position, and as her starboard anchor had comparatively little holding power from the small amount of chain which was out, and which could be put out with safety as she lay, it was decided by the master and by Captain Macaulay, who remained on board throughout and was the master's chief counsellor during the stranding, to be of great advantage to get the ship at right angles to the reef so as to receive the sea as much as possible right astern. Accordingly, the starboard anchor was taken up and, with the tug and the launch holding her stern, the ship swung around to the desired position, her head pointing

northerly. This position was maintained until she [3382] came off at 12:20 o'clock A. M., Thursday.

From the moment of touching the reef and until the arrival of the tug "Intrepid," the ship was gradually altering her position, being carried forward by the swell, her tendency being toward a position broadside to the reef. After taking the tug's line, her position on the reef was easier, but in spite of the efforts of the tug and of the Inter-Island vessels which soon arrived, she kept gradually going in during Monday until on that night she was aground for her whole length, and moved about six feet still further in on Tuesday; by Wednesday morning her forward movement had ceased. In this forward movement she had been carried fully 70 feet. Her final position, solid on the reef, may be appreciated by a comparison of her draft laden to water line, as she was on this voyage,—20 feet 10 inches forward and 21 feet aft,—with the soundings of the water around her—16 feet forward, 18 feet amidships, and 19 feet aft.

The Inter-Island company's steamship "Mikahala" arrived at about 10:30 o'clock on Monday morning, and within a half hour later the "Mauna Kea" of the same company. The master of the "Celtic Chief," upon their inquiry, expressed his desire to have all the assistance obtainable, and they at once passed lines to the ship,—the "Mauna Kea" a new 12-inch manilla hawser of about 600 feet length through the ship's port quarter wharfing chock and fast around the mizzenmast, and the "Mikahala" a new 8-inch manilla hawser through the ship's starboard quarter chock to strong iron bitts on the main

deck. The "Mikahala's" line was attached to a bridle [3383] (or double line) running in through the steamer's midship chocks, port and starboard. On Wednesday the "Mikahala" ran a second line of the same kind and size from her port chock amidship to the same point of attachment on the "Celtic Chief" as her first line. The "Mikahala" pulled by use of her propellers almost continuously thereafter until the ship was floated, having out about 400 feet of towing line and her port anchor down about two points (a point is $11\frac{1}{2}$ degrees) east of the ship's stern, with about thirty fathoms of chain in about five fathoms of water,—the purpose of her anchor being principally to maintain her in position. Her bearing from the ship was S. E. by E. The "Mikahala's" tonnage was, gross 444, net 354. Her engines were 404 horse-power. The useful or effective thrust of her propeller was about 2.97 tons both tied up and running free. She carried a crew of 35 men besides her master.

The "Mauna Kea" dropped anchor off her port quarter, put a heavy and steady strain on her line and, after several hours' pulling, parted it at the ship's quarter chock. The line was again made fast, and the steamer, going full speed ahead in a quick jump, broke it a second time, pulling so hard as to make a $1\frac{3}{4}$ -inch dent in the steel mast to which the line was fast. Once more she ran her line to the ship and pulled until 7 o'clock Tuesday morning when she left to make her regular scheduled run to Hilo with mail, passengers and freight, and her place and towing line were taken at 8 o'clock by the Inter-Island vessel "Helene." The bearing of

the "Mauna Kea" was southward and a little to the westward of the stranded ship. That "there was a big weight on the [3384] 'Mauna Kea's' line all the time," "that it had a good strain on it," is admitted by the "Celtic Chief's" master and first mate. The "Mauna Kea's" tonnage was, gross 1,566, net 940. Her engines were 2,400 horse-power. The useful or effective thrust of her propellers was over 12 tons both tied up and running free. Her crew was of 60 men, besides her master.

The "Helene" placed her two 2,000-pound anchors for the special purpose of effective heaving on her anchor chains, in addition to pulling by her propellers. She lay at a distance of 635 feet from the "Celtic Chief," and her starboard anchor had out 90 fathoms of chain and her port anchor about 60 fathoms, these anchors being two or three points apart. Her 12-inch line was not only itself fast to the vessel but was also attached thereto by a bridle. The "Helene's" tonnage was, gross 618, net 392. Her engines were of 470 horse-power. The useful or effective thrust of her propeller was 3.11 tons tied up and 3.26 tons running free. Her crew was 31 men besides her master.

On Wednesday noon the Inter-Island company's steamer "Likelike" laid out her anchor ahead about two points off the ship's stern and passed to the ship an 8-inch manilla hawser, which was made fast through the port quarter hawse-pipe to bitts on the main deck. The "Likelike's" tonnage was, gross 374, net 214. Her engines were of 340 horse-power. The useful or effective thrust of her propellers was about 2.5 tons both tied up and running

free. Her crew was of 28 men besides her master.

[3385]

Meantime on Monday morning at about 7:30 or 8 o'clock, Captain Miller, representing the libelant Miller Salvage Company, offered his assistance, without agreement as to compensation, and about 10 o'clock the Miller boats,—the schooner "Concord," the gasoline motor boat "Mokolii," and the steamship "James Makee,"—arrived and the lightering of the cargo began, stevedores passing out by hand bags of fertilizer directly into these vessels which were moored alongside the ship. After noon of Monday the Miller lighter "Kaimiloa" was also brought out. The Miller company's men continued lightering until 2:30 A. M. of Tuesday. By this time they had taken out 239 tons of fertilizer, which was carried to the wharf and discharged.

On Tuesday afternoon Captain Miller came out with a so-called 7-ton anchor (actual weight 10,000 pounds) which was finally laid out astern and connected with the "Celtic Chief" through the starboard after-chock by powerful lines and a system of triple purchase tackles rigged on the deck of the ship and worked most of the time from the ship's duplex capstan with sixteen men at the bars, and when infrequent occasion offered by the ship's winch. These lines consisted of a new $2\frac{1}{4}$ -inch steel wire cable attached to the anchor and a new 12-inch manilla hawser shackled to this wire at about 30 feet from the ship's stern, the manilla line being reinforced by a double piece of $1\frac{1}{2}$ -inch steel wire. The large manilla line was attached to the system of three tackles through the first, second and third

triple blocks of which [3386] ran, respectively, 7-inch, 5-inch and 3¼-inch falls of new manilla rope. The Miller anchor lay about 900 or more feet almost directly astern of the "Celtic Chief" and a little to the starboard. The Miller company employed under Captain Miller about 45 to 60 men, most of them working overtime from 5 to 11 hours in addition to a full day on Tuesday and Wednesday, and in addition to a three-quarter day on Monday. Besides the above vessels, a small gasoline launch, the "Elizabeth," was used in the Miller company's operations.

At the request of the ship's master, the Inter-Island company's superintendent, Captain Haglund, began lightering operations at about 11 o'clock Tuesday morning, working at the main hatch until noon, and after 1 o'clock at both the main hatch and the after hatch with an increase of men, continuing all that afternoon and evening and until about 2 o'clock Wednesday morning. Men from the crews of the "Mikahala" and "Helene" and extra stevedores, about 100 in all, were thus employed. About 6 A. M. lightering was resumed and continued until about 11:30 P. M., or shortly before the ship was free. At about noon of Wednesday a floating donkey-hoist was moored by an anchor and lay opposite the main hatch of the port side, as a complement to the ship's winch which was used throughout but which was inadequate for all the work required. The Inter-Island company took out about 365 tons of cargo, carrying it in surf boats to the Inter-Island steamers, whence it was discharged at the wharf. [3387]

At noon of Wednesday the cruiser "Arcona," of tonnage of 2,800 and horse-power 8,200, and a full equipment of anchors and lines, came out to assist the ship, at the request of her agent and of the British consul. Monday evening and again on Tuesday she had been called upon for aid, but her commander "did not relish the job," and wanted to wait a day to see if the salving agencies at work were not successful unaided. The master of the "Celtic Chief" desiring that the "Arcona," because of her great power, should have the most favorable position, occupied by the "Intrepid," requested the master of the tug to cease towing, so that his line could be cast off, but he refused to yield. The ship's master then sent a note in writing to the same effect, stating as his reason for this action the desire "to make a good berth for the man-of-war," also offering to take the tug's line "from some other part of the ship." But as the tug still stood firm, her line was cut by order of the ship's master. The "Intrepid" then made room for the "Arcona," and continued to lay within hailing distance in case of need, though informed that his assistance would not be required further. It was a condition imposed by the commander of the "Arcona" that his vessel should have the "Intrepid's" position astern before giving any aid.

The "Arcona" dropped her port anchor dead astern of the "Celtic Chief" and a little outside the position of the "Helene." After having parted her first line, of manila, which appears to have been merely a messenger for another line, she passed a small wire line of her own to the ship and started [3388] ahead at increasing speed. The wire broke

almost immediately. This was at about high tide, between 12 and 1 o'clock. She swung around to her anchor and drifted with the swell and current down rather close to the "Helene." She hove anchor and moving further eastward and seaward, dropped her port anchor again, this time about directly ahead of the "Mikahala's" bow and some three or four hundred feet distant therefrom. Her stern was then on a line directly ahead of the "Mikahala's" bow. She paid out more chain and swung westward toward the "Helene" until she was halfway between the "Helene" and the "Mikahala" and seaward of them a little. She then ran a wire of her own and took one from the ship, started her engines ahead, and after pulling for from five minutes to a half-hour, broke the ship's wire at about 3 o'clock. She then attempted for several hours to get a long wire aboard the "Celtic Chief," but failed, and again ran two wires, using the ship's broken wire which had been spliced and reinforced; between 6 and 7 o'clock she had finally made fast, and proceeded to "equalize" the wires and to then heave in on her anchor-chain, not using her propellers at all. She kept somewhat of a strain on her anchor-chain thereafter until the ship floated. About 8 o'clock she turned on her two large search-lights, which afforded a favorable condition for the salvage operations during the rest of the evening.

A vast, and very much of it profitless, mass of testimony was offered on the point whether the "Arcona" did any pulling on the stranded ship,—that is, by means of her steam winch's hauling in on her anchor-chain, for it was not contended that she made

any use of her propellers until after [3389] the ship was free from the reef,—and if she exerted any efforts, whether they were effective. The barrenness of the depositions of the “Arcona’s” officers, and the fact that these witnesses were content to refer to an official report which was not in evidence, deprived the Court of most of their knowledge on vital points. Detail and circumstance were greatly to be desired, but these depositions were too general and sketchy to be of much assistance, and raised inconsistencies which a more searching examination of the witnesses might have removed. This deficiency is not attributed to anything more than the inherent limitations and inefficiency of an examination on written interrogatories. The testimony of the “Arcona’s” officers is apparently irreconcilable with that of other witnesses of undoubted veracity who were present at the time when, and for several hours before, the ship was freed. The master of the “Celtic Chief” also testifies in apparent disagreement with others who testified to there having been little or no strain on the “Arcona’s” lines at that time. The testimony of the “Celtic Chief’s” first mate, Lowry, as to strain upon the “Arcona’s” lines is not to be referred to the vital period here, for from 10 to 11:30 o’clock he was resting below, and thereafter was busily engaged forward. His testimony of a great strain that crushed the “strong-backs” does not fix the time of this strain and it cannot be assumed to apply to the period in question,—when the witness was not in a position to observe. It may well, and most likely, have applied to the time when the “Arcona” was

using her powerful engines to move her propeller.
[3390]

No justification appears for the imputation of falsehood to the German officers and Captain Henry, who testified to there having been a strain on the "Arcona's" lines and to her having heaved on her anchor-chain for the two or three hours before she was floated, and the apparent conflict of testimony can be fairly attributed to nothing more than difference of viewpoint, difference of degree of intensity implied by use of such words as "tight," "taut," "strain," *et cetera*, referring to lines and anchor-chains, and perhaps, though less likely, actual error of observation.

The reason which at least four credible witnesses assign as preclusive of the application of any power to the anchor-chain, to wit, that if such power had been applied, the "Arcona" or her lines would have run afoul of the "Mikahala," is somewhat difficult to explain away; but repeated reviews of the testimony, and regard for the principle by which testimony in apparent conflict is to be reconciled if possible,—for we are not to impute untruth to anyone in the first instance or to one witness rather than to another,—all incline me to the belief that such testimony of Captain Macaulay and other credible witnesses is in error. I do not think the "Arcona's" anchor was as far over toward the line of direction of the "Mikahala" as Captain Piltz, e. g., believed or supposed.

And the testimony of the Inter-Island witnesses bears this out. Although Captain Macaulay placed the "Arcona's" anchor far over on the port bow and

directly, and only a little, ahead of the "Mikahala" and the "Mikahala's" anchor out dead [3391] ahead of the "Mikahala," Captain Tullett, master of the "Mikahala," placed the anchor of his own ship about as far over on her port bow as he, and as Captain Macaulay also, placed the "Arcona's" anchor with relation to that vessel, but much further ahead of the "Mikahala" than Captain Macaulay. Now, again, Captain Piltz, first officer of the "Mikahala," testifies not that the anchor of his ship was dropped dead ahead, as Captain Macaulay's diagram shows, but "on our weather, port, bow," and that "the winches were used, first pulling to take in slack of anchor-chain and after[wards] keeping tight; that was the way we lay, with anchor-chain ahead tight." So, if the "Mikahala's" anchor lay on her port side and the chain was kept taut, the result would be that the "Mikahala" with strain on her chain would be pulled as far over to port as was the "Arcona" with strain on her chain, and there would be no danger of interference. To appreciate these conditions, reference should be made to Captain Tullett's diagram, Libelants' Exhibit "H." I may say here that I am not unmindful that after 11:45 o'clock the "Mikahala" had lost her anchor in an effort to heave it in, on her master's order to get in readiness to tow the "Celtic Chief." But it was then still the "Mikahala's" duty to look out for the "Arcona," and it may be presumed that she did it. Another thing, in spite of some instances of clumsiness and want of foresight and of forethought manifested in the "Arcona's" operations, it should not be inferred except as an unavoidable inference, that she would place her

anchor in a position of danger to herself and to the "Mikahala." It is equally clear that the "Mikahala's" officers, so intelligent, alert, and experienced in salvage operations, would not have observed such action on the part of [3392] the "Arcona" without complaint or effort to have her take a safer position,—of which there is no evidence. The "Arcona" moved her anchor from its first position to avoid interference with the "Helene" on her starboard: is it reasonable that she should have picked up anchor only to at once place herself in danger of interference with another vessel on her port, especially when consideration for her own safety and great reluctance at mixing in the operations at all, were her prime controlling motives?

The testimony of the Inter-Island witnesses on this point is, on the one hand, of the tautness of manila lines and on the other of the slackness of steel wire lines,—or rather not so much a condition of slackness of lines as of lines running from their points of exit at more or less of an acute angle or approaching the perpendicular, as contrasted with a condition of lines standing out more or less horizontally, "tight as a fiddle-string," as one witness, though not an Inter-Island witness, said in exaggeration. Such testimony might be explained by differences of density of the lines compared; the manila line tends to float, the steel wire to sink, and under even a fair strain a long steel line would naturally not be as straight as a line of more buoyant material, such as manila rope.

On the whole, though the depositions leave much to be desired on this point, I am of opinion that there

was some strain on the "Arcona's" lines, perhaps such a strain as the power of her winch would permit, or could effect under the conditions,—it being remembered that the weight of the two [3393] long steel wires and the force of the current and swell against the comparatively large mass of the cruiser gave some resistance for the winch to overcome, aside from the resistance or inertia of her anchor and anchor-chain. I do not find that the winch was being used constantly, but, in accordance with the commander's orders, that "the hawsers were to be made taut by heaving in the chain," and "to be kept taut all the time by heaving in the chain as soon as the hawsers would slacken." Witness Mason described her lines fairly when he said that the "Arcona" was "only hanging on to her anchor,"—"not pulling, but her lines were fairly taut."

However, as it is conceded by the claimant, that the "Arcona" was exerting force only through her winch's heaving in the anchor-chain, there seems to have been no occasion for all the contention and the great mass of testimony over so small an element of aid.

For the "Helene" was using her own winch in the same way and had down two anchors whose combined weight, with the combined weight of their chains, was at least about a ton and a third, and perhaps two and a third tons more than the weight of the "Arcona's" anchor and chain, and the "Helene" put all the power that she could on her winch. The "Helene's" two anchors were laid farther out than the "Arcona's" anchor, one about 200 feet further and the

other 30 feet further, giving her anchors better holding power.

As the "Helene" was exerting power more effectively, as I find, in a similar way at the same time, it cannot be that the "Arcona" can take all the credit or any more than a share [3394] of the credit for pulling the "Celtic Chief" from the reef. The mere fact that the "Arcona" was a larger vessel than the Inter-Island boats, and her engines vastly more powerful, is immaterial. Her anchor-moving agencies cannot be presumed,—in view at least of the evidence as to the comparative size of anchors of the two vessels,—to have been any more powerful. But, at all events, I do not find that it was any pulling agencies that saved the ship from her position on the reef,—that is, primarily. But it was the lightering that put her further afloat or so nearly afloat that her moving was comparatively easy.

The pulling agencies did not keep her from going further on the reef at least until some time on Tuesday,—which is rather significant and, to my mind, speaks strongly of the force of the "Helene's" heavy anchors then placed, at about 8 o'clock A. M., far out ahead for the express purpose of holding. Her forward movement had already ceased a day or so before the "Arcona" was finally made fast to the ship. So the cruiser cannot have any credit on that score.

It may be, however, that too much credit should not be given to the "Helene" for the ship's final stationary position, in view of the circumstantial evidence,—afforded by the soundings above given, showing a rapidly lessening depth of water from stern to stem,—of the hard-aground condition of the ship as

due to her keel's being carried forward with great force against a more sharply sloping sea-bottom. It may be noted, that earlier soundings had shown 19.5 feet all around the ship; also that her keel was, finally, embedded [3395] 6 inches, in Captain Macaulay's opinion, and as much as 12 inches in the opinion of other experienced seamen. But this might prove only the ship's stable equilibrium at low or average water, and not that the considerable holding power of the "Helene's" anchors would not be called for at high tide large, when the sea level was a foot and a half or more higher. And, under all the evidence, I feel justified in giving full credit to the "Helene's" anchors for the ship's secure position.

The pulling agencies had accomplished nothing positive toward the removal of the ship from her stranded position to a place of safety. Therefore it was reasonable to seek increased and more speedy lightering. In the early evening of Wednesday, a point was reached when Captains Macaulay and Henry were calculating that the removal of only a comparatively few more tons, about 80, would enable the ship to float at high tide large of that midnight. Only about 40 tons were removed, however, before lightering was stopped, at 11:30, and before that time the ship had become livelier and was soon rolling in her bed.

When the Inter-Island men stopped lightering at 11:30 o'clock Wednesday night, over 600 tons of cargo had been removed. By midnight, this lightering and the increase of the tide to its flood, had, as just intimated, begun to show their effects. At about 11:45 the ship was first seen to be moving seaward,

gradually, very slowly. She seemed then to stop and her subsequent movements to have been more decided and distinct, i. e., not one gradual movement. Her momentum then gradually increased again, and at 12:20 the [3396] "Celtic Chief" left the reef. All lines other than those of the "Arcona" were immediately cut away except that the "Mikahala" kept one line fast until she had pulled the ship off to eastward away from the "Arcona," which she was approaching—some say dangerously close, depending upon their viewpoint. And I am inclined to think that there was danger of bumping, though bumping did not actually occur. The "Arcona" kept at first both lines, and then only one, fast and towed the ship by her stern for some distance. It was understood that the "Arcona" was to take the ship to an anchorage, but when a mile—and unnecessarily far—out to sea, her commander desired to be relieved. Whereupon the "Mikahala" towed the "Celtic Chief" to a safe anchorage, and in the morning the Inter-Island steamship "Maui" took her into the harbor.

It is undeniable that the "Celtic Chief" was rescued from her unfavorable position and brought to a place of safety by efforts other than her own, and that those efforts were exercised by the tug "Intrepid," the Inter-Island ships and men, and the Miller anchor and tackle and the Miller boats and men, and by the cruiser "Arcona." The services of all but the "Arcona" were substantial, indispensable; the efforts of the "Arcona" were not substantial, were not indispensable, and were rendered in a manner which was clumsy and slow, and which might have been a source of danger. Her services

would, however, be entitled to some allowance. But not as much as if she had lent her hand "with a will"; for, if it was for any purpose that she came out there, and her presence was desired there, it was for the great power of her propelling [3397] engines and not the ordinary power of a capstan engine or winch engine. It is evident that her commander preferred to wait until daylight, which they had already wasted in a prodigal manner, when they might by such promptness and decision as shown by the "Helene," have been ready to exert her pulling powers at the preceding high water at noon and thereafter. This is important only as bearing on the attitude of the cruiser as a salvor, because actually her efforts were not needed: the ship would have come free without her.

It may be noted here that a half-heartedness characterized the efforts of the "Arcona's" men. They were gingerly, in a fear of damage to their vessel. At the start they used comparatively small lines, then tried to put a large wire aboard but by means which were sure to fail because of the want of a buoying agency to keep the wire's great weight afloat. Their fear of the small lines is evident, wherefore the attempt to run a large line, and fearing further breaks and the danger consequent with the smaller lines which were retained, they may not have executed quite their best efforts. The fear of fouling broken lines explains why they did not use their propeller on Wednesday night. But it seems feasible to have run the larger line, had they been persistent and only disposed to do what was necessary though inconvenient,—viz., secure a large launch (and the "Arcona" had one herself) or buoy-

ing agency to keep the heavier line from the seabottom. They used only small boats. It would seem, however, that the master of the "Celtic [3398] Chief" should himself have appreciated the necessity for a buoying agency,—for instance, the "Intrepid" was there at hand and with her small draft could get up close to the ship,—and he should have supplied the quick wit which the Germans either wanted or were not ready to act upon. It is probable that the careful and certain calculation of the ship's floating upon being relieved of a certain amount more of her cargo made the "Arcona's" officers confident that the case would not be one requiring any great amount of pulling,—merely the operation of towing a floating ship.

The "Intrepid's" services, though on the whole of far less value than those of the Inter-Island and Miller companies, were of great value, were indispensable, as she arrived very promptly and gave the first efficient aid. Her master Captain McAllister, did wrong in not giving place to the "Arcona" at the request of the "Celtic Chief's" master, especially as the "Celtic Chief" offered to take his line at another place. But he showed the right spirit in moving promptly out of the way immediately when his line was cut and in laying near by ready to help if required, even after dismissal by the "Celtic Chief's" master. Therefore, I do not feel called upon to penalize the "Intrepid," though, under other circumstances, especially a wilful disposition to hinder the operations, a reduced award would have been just.

Before determining the amounts of the awards

to which the various libelants are entitled, I will dispose of the claim that the Miller Company had forfeited its rights by misconduct. The only fault I can find is, that Captain [3399] Miller had made too much out of what naturally arose from sportsmanlike rivalry between the Miller men and the Inter-Island men, and perhaps a little more than rivalry, though probably "only human," between these local men and the foreigners who came on the scene late and displaced one who had been the first to aid. If Captain Miller was guilty of anything, it was of false swearing, but I do not wish to be understood, for I do not feel so justified, as imputing deliberate falsehood to his testimony. His attitude as to bumping the "Arcona" is not approved. Some may excuse it as "only human," for it was clearly inspired by much the same considerations as have been intimated in our discussion of rivalry; yet it is heroic and generous qualities that are to be rewarded in cases of salvage, the highest "human" qualities, and when one goes to rescue a ship in distress, he should leave the weaker "human" qualities behind. The award given to the Miller company will, therefore, not only for Captain Miller's mental attitude, but for the little he was actually doing under its impulse, be reduced by \$400, being double the amount which Captain Miller himself considered would cover any possible trifling damage that might result from a bumping. The allegation of negligence in the Miller company's having begun lightering without having put out anchors comes with poor grace from the master of the "Celtic Chief," who was from the very first advised by Cap-

tain Miller to put out the "Celtic Chief's" own extra anchor seaward or to let him get the Miller anchor which was finally put out, but whose advice was not then acted upon. A mere reference to Captain Henry's own testimony will suffice to show [3400] the unfairness of this claim. The fact is, that Captain Henry was more anxious to have the Miller Company lighter than to bring out its anchor. It might have done both, however, but so far as Captain Henry is concerned, that does not appear to have been urged by him. A similar claim to reduce the award of the Inter-Island Company is even more unreasonable. For the "Helene" had her anchors out three hours before the Inter-Island began lightering.

Enough has been said to indicate that what was effected on Wednesday night might as well have been done at high tide, and more safely by daylight high tide, at least a day, and possibly more, earlier. When the men and the ship's engines and appliances did work, they worked with energy and efficiency, though the pulling agents towed at reduced speed at low water, as was advisable. The Inter-Island and Miller men and the men of the "Intrepid" were deserving of praise for their efforts and their spirit.

The element of danger was clearly present—not the danger of rough weather, though that was actually imminent, but particularly the danger of the ship's being rapidly pounded to pieces on the coral sea-bottom, or thrown broadside on the reef, as the testimony shows to have been the case with other ships in this vicinity. She bumped considerably and was violently shaken when lifted by the swells early in her stranding. These dangers were relieved

more and more as the salving agencies came to her assistance. It does not take long for a vessel so heavily weighted to open her seams when lifted and dropped upon a resistant sea-bottom, [3401] the time of destruction being dependent upon the stress of wind and wave; and that the weather and sea conditions were so favorable was a lucky circumstance. The cargo was practically all of a character perishable on exposure to sea water. The fact that no leak resulted in these three days on the reef shows how effectively her early bumping was checked. It will be said here once for all that the ship was saved without material injury. There was danger to the men who lightered cargo into surf boats—especially the Inter-Island men. The case was a different one from that of lightering from a large vessel riding at anchor, and rising and falling with the swell, but to some of the men presented the peril of working in a small boat close to a solid body against which the sea was pounding, and under an overhanging sling carrying several hundred pounds' weight. The danger to the other men engaged was nothing more than is commonly involved in a seaman's or stevedore's work, except, of course, the increase of danger inherent in working under pressure and with engines and appliances strained to their limit of safety. The success of the lightering is demonstrated by the small amount of loss in the lightered cargo—only \$1,441.

The property saved was a ship whose value I find to have been \$25,000, accepting practically, with a little liberality, the valuation of men more experienced in appraising ships than was the Inter-Island's witness, whose expert knowledge clearly does not

extend to values in the present market. [3402]

The "Celtic Chief" was built in Dunbarton in 1885; an iron ship of 266.8 feet length, 39.5 breadth and 22.3 depth. Her tonnage was, gross 1,789, net 1,709. Her condition was first class. She was rated by Lloyds as "100 A-1." The conceded value of the cargo, including the freight thereon, was \$111,000, which less \$1,441, the damage to lightered cargo, gives a net value of \$109,559. This added to the value of the ship gives the aggregate value of property salvaged, as \$134,559.

The value of the Inter-Island vessels with their equipment, and the length of service of these vessels, according to their own witnesses, are as follows:

"Mauna Kea,"	\$325,000, engaged about 20 hours;
"Helene,"	100,000, engaged about 42 hours;
"Mikahala,"	40,000, engaged about 62 hours;
"Likelike,"	100,000, engaged about 12 hours;

The expenses of the Inter-Island operations, exclusive of regular salaries and wages, were \$3,561.77, including overtime of men, extra stevedores, launch hire, use of barge and donkey-hoist, extra fuel, loss and depreciation of ropes, lines, and anchor-chain and anchor. Overtime cost \$456 and extra stevedores \$1,059.

The highest value of the Inter-Island ships engaged at any one time was \$465,000, the lowest \$240,000.

The values of the Miller vessels engaged were, according to Captain Miller, as follows:

"Concord,"	\$3,000.	
"Mokolii,"	8,000.	
"James Makee,"	15,000.	[3403]
"Kaimiloa,"	2,000.	
"Elizabeth,"	4,000.	

The value of the Miller anchor and tackle was \$12,000. The aggregate of these values is \$44,000. The values were shown, by comparison with tax returns and purchase prices and other data, to be so exaggerated, that they can be safely discounted to one-half and still be very liberal.

In consideration of the foregoing views, I find that the services of the salving agents are reasonably worth \$30,000—which is about $17\frac{1}{2}$ per cent of the value of property salvaged, plus interest at 6 per cent for the $31\frac{1}{2}$ years since the services were rendered (see *The Chiusa Maru*, 3 U. S. Dist. Ct. Haw. 361, 371), for it is only just and equitable that allowance be made for the great delays, most of them at least unavoidable. Deducting \$500, which though small is all that can be allowed for the services of the “*Arcona*,” who is not suing for an award, there remains \$29,500, which is apportioned as follows:

To the “*Intrepid*” and her men, \$4,000, to be divided $\frac{3}{4}$ to her owners the Matson Navigation Company, and $\frac{1}{4}$ to her master and crew, *pro rata* according to their salaries or wages and the number of hours of their service, there first being deducted, however, an award of \$175, in place of any *pro rata* aforesaid, to Captain McAllister, whose award might have been somewhat more but for his attitude toward the request of the “*Celtic Chief's*” master. [3404]

To the Miller Salvage Company, Limited, and men, \$8,000, to be divided $\frac{3}{4}$ to the company and $\frac{1}{4}$ to its men, *pro rata* according to their salaries or wages and the number of hours of their service, less \$500 which would have been awarded to Captain Miller but for his attitude above discussed. That is to say, the $\frac{1}{4}$ is to be reduced by \$500 to \$1,500. And, as

above determined, the $\frac{3}{4}$ is to be reduced by \$400 on account of the matter of the bumping of the "Arcona." The contention that the Miller company should have all the award and its men nothing is not favored. It is urged that the men were mostly at least hired for this special work, and that the rule contended for applies also where men are in the regular employ of a company engaged in salving as a business. It is not shown with any clearness or conclusiveness, if at all, that the men were to waive any rights to a share in the award. This fact, and considerations set forth by Judge Benedict in *The Cete-wayo*, 9 Fed. 717, 719, 720, influence my views of the contention.

To the Inter-Island Steam Navigation Company, Limited, and her men, \$17,500, to be divided $\frac{1}{4}$ to the officers and crew and $\frac{3}{4}$ to the company, *pro rata* according to their salaries or wages and the number of hours of their service. The award to the men is to be first applied as follows: \$500 to Captain Haglund, superintendent of the Inter-Island operations, \$250 each to Captain Tullett of the "Mikahala" and Captain Nelson of the "Helene." \$150 to First Officer Piltz of the "Mikahala," and \$75 to Captain Naopala of the "Likelike," all these special awards to take the place of the *pro rata* shares of these officers in the general [3405] award to the men.

Captain Macaulay, whose services were of special value, and who was on duty throughout, and was the guiding spirit in the operations, and whose testimony has been helpful in a full view of conditions at all times, makes no claim. But it would not be just to pass his services without special commendation.

As to the claims for expenses, the Inter-Island company's claim of \$3,561.77 is allowed, except as to \$1,515 for overtime and extra stevedores, which are covered by the general award; and the claim of the Miller company is allowed in the sum of \$1,400, being the amount claimed in its libel (the actual proof was \$65.26 more, but no amendment to conform to the proof is asked for, and while the Court's equitable powers may permit the presumption of an amendment, this seems not a case for the exercise of such powers at this stage, unasked). The Miller company's claim of \$726.30 for regular wages of men is disallowed as covered by the general award.

The Court is indebted to Mr. Warren, of counsel for libelants, for his very thorough, well-arranged and on the whole fair synopsis of the vast mass of testimony. Such briefs are most helpful, though it must not be understood that the Court has not itself given the case full and conscientious attention or that briefs of other counsel are disparaged. [3406]

As to the costs, the Court considers the claims aggregating \$70,000 excessive, and orders that the libelants divide the taxable costs herein, hereinafter to be taxed, between them *pro rata* according to the amount of their original claims set forth in the first paragraph of this opinion. See *The Manchuria*, 3 U. S. Dist. Ct. Haw. 150, 168.

Honolulu, June 17, 1913.

(Sgd.) CHAS. F. CLEMONS,
Judge, United States District Court.

[Endorsed]: No. 116. Decision of Clemons, J., on Libel for Salvage. Filed Tuesday, June 17, 1913.
[3407]

[Title of Court and Cause—Nos. 115, 116, 117.]

**Final Decree in Favor of Inter-Island Steam
Navigation Company, Ltd.—No. 115.**

It appearing that heretofore the several causes above entitled, respectively, and being causes numbers 115, 116, and 117 of [3408] causes in admiralty in this court, were by order of this Court consolidated for trial; and said consolidated causes having come on regularly to be heard before this Court upon the pleadings and the evidence adduced by the respective parties, and the proctors for the parties having been heard thereon; and the said causes having been submitted to this Court for determination;

And the Court having duly considered the same and having on the 17th day of June, 1913, rendered and filed its decision in said consolidated causes; and the Court having determined that the services rendered to the above-named respondent The British ship "Celtic Chief," her tackle, apparel, machinery, boats, furniture, appurtenances, cargo and freight money by the said libellant Inter-Island Steam Navigation Company, Limited, and the officers and crews of its steamers the "Helene," "Mikahala," "Like-like," and "Mauna Kea" above named, and other servants thereof, were salvage services, entitled to compensation as in said decision and this decree provided;

NOW, upon motion of L. J. Warren, Esq., of Messrs. Smith, Warren & Hemenway, proctors for said libellant Inter-Island Steam Navigation Company, Limited, it is ORDERED, ADJUDGED AND DECREED, that the said libellant, Inter-

Island Steam Navigation Company, Limited, for itself and the officers and crews of its said steamers and other servants thereof, do have and recover from the said respondent The British Ship "Celtic Chief," and that said respondent the British Ship "Celtic Chief" do pay unto the said libellant Inter-Island Steam Navigation Company, Limited, accordingly, the sum of Seventeen Thousand Five Hundred Dollars (\$17,500), in lawful money of the United States, with interest thereon from the date hereof until paid at the rate of six per cent per annum, for its own use and in trust for its men as hereinafter provided, for the salvage services [3409] rendered by the said Inter-Island Steam Navigation Company, Limited, and said officers and crews of said vessels and other servants of said libellant, to be apportioned between them as hereinafter more particularly provided; and also that said libellant Inter-Island Steam Navigation Company, Limited, have and recover from said respondent, and that said respondent pay to said libellant Inter-Island Steam Navigation Company, Limited, the further sum of Two Thousand Eleven and 77/100 Dollars (\$2,011.77) as and for the amount of the actual costs and disbursements of said libellant on account of and during the said salvage operations.

And it further appearing to this Court that the said British Ship "Celtic Chief," and her tackle, apparel, machinery, boats, furniture, appurtenances, cargo and freight money have been released to the above-named John Henry, Master and claimant in this cause (No. 115), upon a stipulation in the sum of Thirty-six Thousand Dollars (\$36,000), with the

United States Fidelity & Guaranty Company, a corporation, of Maryland, as surety: It is hereby further ORDERED, ADJUDGED AND DECREED, that unless this decree be satisfied, or proceedings thereon stayed by appeal, within ten days after notice of this decree given by the libellant Inter-Island Steam Navigation Company, Limited, by its proctors, to Messrs. Holmes, Stanley & Olson, proctors for said respondent The British Ship "Celtic Chief," and said claimant, the said Surety, United States Fidelity & Guaranty Company, pay to the said libellant Inter-Island Steam Navigation Company, Limited, the said sum of Seventeen Thousand Five Hundred Dollars (\$17,500) and said further sum of Two Thousand Eleven and 77/100 Dollars (\$2,011.77) hereinabove awarded as aforesaid, or show [3410] cause within five days after the expiration of said period of ten days why execution should not issue against it, its lands, goods and chattels, according to said stipulation, to satisfy this decree. In the event of proceedings hereunder being stayed by appeal, the obligation of said surety under said stipulation shall be suspended, to satisfy such decree as shall or may be finally made herein upon mandate on appeal. And upon payment of the said sums of \$17,500 and \$2,011.77 (or as may be directed by any final decree upon mandate in case of an appeal), the said surety shall stand released from further liability on account of the said stipulation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said sum of Seventeen Thousand Five Hundred Dollars, so awarded as salvage herein, be and the same is hereby apportioned

three-fourths (or the sum of \$13,125) to the said Inter-Island Steam Navigation Company, Limited, as its share of said salvage award, and one-fourth (or the sum of \$4,375) to the officers and crews of the said steamers "Helene," "Mikahala," "Likelike" and "Mauna Kea," and other servants of said libellant; the said last-mentioned sum of Four Thousand Three Hundred and Seventh-five Dollars (\$4,375) to be deposited in the registry of this court pending further order to be and being hereby further apportioned and divided as follows:

To Capt. J. F. Haglund, then Superintendent of said Inter- Island Steam Navigation Co., Ltd., the sum of.....	\$ 500.00
To Capt. R. Nelson, then Master of the said Steamer "Helene," the sum of	250.00
To Capt. A. Tullett, then Master of the said Steamer "Mika- hala," the sum of.....	250.00
To Capt. Geo. E. Piltz, then First Officer of said steamer "Mi- kahala," the sum of.....	150.00
To Capt. M. Naopala, then Master of said Steamer "Likelike," the sum of	75.00

Which said special awards amount
in all to the sum of.....\$1,225.00

[3411] leaving remaining of said sum of \$4,375 a
balance of Three Thousand One Hundred and Fifty
Dollars (\$3,150), which last-mentioned sum shall be

apportioned and distributed between all of the officers and members of the crews of said steamers and other servants of said Inter-Island Steam Navigation Company, Limited, except (and excluding from participation in said last-mentioned sum) the said J. F. Haglund, R. Nelson, A. Tullett, Geo. E. Piltz and M. Naopola; that is to say, that said last-mentioned sum of \$3,150 shall be distributed between all of the officers (except as above named as excluded therefrom) and members of the crews of the said steamers "Helene," "Mikahala," "Likelike," and "Mauna Kea," and other servants of said Inter-Island Steam Navigation Company, Limited, whose names appear upon the payrolls of the said Inter-Island Steam Navigation Company, Limited, *pro rata*, according to the amounts shown as actually earned or due them respectively in salaries or wages during the said salvage operations from and including December 6th, 1909, to and including the time of the floating of the said British Ship "Celtic Chief" at or about the hour of twelve-twenty (12:20) o'clock A. M. on December 9th, 1909; and for the purpose of such apportionment of said sum of \$3,150, it is hereby further ORDERED that said Inter-Island Steam Navigation Company, Limited, file in this court within sixty (60) days from the date of this decree a sworn statement showing the names of the several officers and members of the crews of said steamers and other servants of said company participating in said salvage operations, and the rates of salaries or wages then being paid to each, and the amounts earned and due them respectively during the said salvage operations (including over-

time); the said apportionment [3412] then to be consummated under further order of this Court.

It is hereby further ORDERED, ADJUDGED AND DECREED that the said libellant Inter-Island Steam Navigation Company, Limited, pay on account of costs in the said consolidated causes 35/70ths (or one-half) of the taxable costs, the same to be taxed by the Clerk.

Dated, Honolulu, Territory of Hawaii, June 17th, 1913.

(Sgd.) CHAS. F. CLEMONS,
Judge of the United States District Court in and for
the District and Territory of Hawaii.

[Endorsed]: No. 115. Final Decree in Favor of
Inter-Island Steam Navigation Company, Limited.
Filed Jun. 17, 1913. [3413]

[Title of Court and Cause—Nos. 115, 116, 117.]
**Decree for Miller Salvage Company, Limited—No.
116. [3414]**

It appearing that heretofore the several causes in admiralty above severally entitled, and being causes numbers 115, 116, and 117 of causes in admiralty in this court, were by order of this Court consolidated for trial; and said consolidated causes having come on regularly to be heard before this Court upon the pleadings and the evidence adduced by the respective parties, and the proctors for the parties having been heard thereon; and the said causes having been submitted to this Court for determination;

And the Court having duly considered the same and having on the 17th day of June, 1913, rendered

and filed its decision in said consolidated causes; and the Court having determined that the services rendered to the above-named respondent The British Ship "Celtic Chief," her tackle, apparel, machinery, boats, furniture, appurtenances, cargo and freight money by the said libelant Miller Salvage Company, Limited, and servants thereof, were salvage services, entitled to compensation as in said decision and this decree provided;

Now, upon motion of P. L. Weaver, Esq., proctor for said libelant, Miller Salvage Company, Limited, it is ORDERED, ADJUDGED AND DECREED, that the said libelant, Miller Salvage Company, Limited, do have and recover from the said respondent The British Ship "Celtic Chief," and that said respondent The British Ship "Celtic Chief" do pay unto the said libelant, Miller Salvage Company, Limited, the sum of Seven Thousand One Hundred (\$7,100.00) Dollars, in lawful money of the United States, with interest thereon from the date thereof until paid at the rate of six per cent per annum, [3415] for its own use and in trust for its men as hereinafter provided, for the salvage services rendered by the said Miller Salvage Company, Limited, and servants of said libelant, to be apportioned between said company and the foremen and men as hereinafter more particularly provided; and also the said libelant Miller Salvage Company, Limited, have and recover from said respondent, and that said respondent pay to said libelant Miller Salvage Company, Limited, the further sum of One Thousand Four Hundred (\$1,400.00) Dollars as and for the amount of its actual damages incurred during the said salvage operations.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said sum of Seven Thousand One Hundred (\$7,100.00) Dollars, so awarded as salvage herein, be and the same is hereby apportioned Five Thousand Six Hundred (\$5,600.00) Dollars to the said Miller Salvage Company, Limited, as its share of said salvage award, and One Thousand Five Hundred (\$1,500.00) Dollars to the foremen and men of said company and other servants of said owner; the latter to be deposited in the registry of this court pending further order the said last-mentioned sum of One Thousand Five Hundred (\$1,500.00) Dollars to be and being hereby further apportioned among the foremen and men *pro rata* according to their salaries or wages and the number of hours of their service, with the exception of Captain Miller who shall take nothing for his services; that is to say, the said sum of One Thousand Five Hundred (\$1,500.00) Dollars shall be distributed among all the foremen, bosses and men and other servants of the Miller Salvage Company, Limited, who shall appear to have been employed by said Miller Salvage [3416] Company, Limited, *pro rata* according to the amounts shown to be paid or due them respectively in salaries or wages during said salvage operations from and including December 6, 1909, to and including the time of the floating of the British Ship "Celtic Chief" at or about the hour of twelve-twenty (12:20) o'clock A. M., on December 10, 1909, and for the purpose of such apportionment it is hereby further ordered that said Miller Salvage Company, Limited, file in this court within sixty (60) days from the date of this decree, a sworn statement showing the name of the several

foremen, bosses and men and other servants of the said company participating in the said salvage operations and the rate of salaries or wages then being paid them, and the amounts earned and due them respectively during the said salvage operations (including overtime); the said apportionment to be consummated under the further order of this Court.

And it further appearing to this Court that the said British Ship "Celtic Chief," and her tackle, apparel, machinery, boats, furniture, appurtenances, cargo and freight money, have been released to the above-named John Henry, Master and Claimant in this cause (No. 116) upon a stipulation in the sum of Thirty-six Thousand Dollars (\$36,000.00) with the United States Fidelity & Guaranty Company, a corporation of Maryland, as surety; It is hereby further ORDERED, ADJUDGED AND DECREED, that unless this decree be satisfied or proceedings thereon stayed by appeal within ten days after notice of this decree given by the libelant Miller Salvage Company, Limited, by its proctor, P. L. Weaver, Esq., to [3417] Messrs. Holmes, Stanley & Olson, proctors for said respondent The British Ship "Celtic Chief" and said claimant, that the said surety, United States Fidelity & Guaranty Company, pay to the said libelant Miller Salvage Company, Limited, the said sum of Seven Thousand One Hundred (\$7,100.00) Dollars and said further sum of One Thousand Four Hundred (\$1,400.00) Dollars, hereinabove awarded as aforesaid, or show cause within five (5) days after the expiration of said period of ten (10) days why execution should not issue against it, its lands, goods and chattels, according to said stipu-

lation, to satisfy this decree. In the event of proceedings hereunder being stayed by appeal, the obligation of said surety under said stipulation shall be suspended to satisfy such decree as shall or may be made herein under mandate as required. And upon payment of the said sum of Seven Thousand One Hundred (\$7,100.00) Dollars and said sum of One Thousand Four Hundred (\$1,400.00) Dollars (or as may be directed by any final decree upon mandate in case of an appeal), the said surety shall stand released from further liability on account of the said stipulation.

It is hereby further ORDERED, ADJUDGED AND DECREED that the said libelant Miller Salvage Company, Limited, pay on account of costs in the said consolidated causes its proportion of the costs hereafter to be taxed by the clerk, the sum of two-sevenths ($\frac{2}{7}$) of the costs.

Dated, Honolulu, this 17th day of June, A. D. 1913.

(Sgd.) CHAS. F. CLEMONS,
Judge, United States District Court, Territory of
Hawaii. [3418]

[Endorsed]: No. 116. Decree in Favor of Miller Salvage Co. Filed Jun. 17, 1913. [3419]

[Title of Court and Cause—Nos. 115, 116, 117.]

**Final Decree in Favor of Matson Navigation
Company—No. 117.**

It appearing that heretofore the several causes above entitled, respectively, and being causes numbers 115, 116, and 117 of causes in admiralty in this

court, were by order of this Court consolidated for trial; and said consolidated causes having come on regularly to be [3420] heard before this Court upon the pleadings and the evidence adduced by the respective parties, and the proctors for the parties having been heard thereon; and the said causes having been submitted to this Court for determination;

And the Court having duly considered the same and having on the 17th day of June, 1913, rendered and filed its decision in said consolidated causes; and the Court having determined that the services rendered to the above-named respondent, The British Ship "Celtic Chief," her tackle, apparel, machinery, boats, furniture, appurtenances, cargo and freight money, by the said libellant Matson Navigation Company, and the officers and crew of its Tug "Intrepid," were salvage services, entitled to compensation as in said decision and this decree provided:

NOW, upon motion of L. J. Warren, Esq., of Messrs. Smith, Warren & Hemenway, proctors for said libellant, Matson Navigation Company, it is ORDERED, ADJUDGED AND DECREED, that the said libellant, Matson Navigation Company, for itself and the officers and crew of its said Tug "Intrepid," do have and recover from the said respondent, The British Ship "Celtic Chief," and that said respondent, The British Ship "Celtic Chief," do pay unto said libellant, Matson Navigation Company, the sum of Four Thousand Dollars (\$4,000), in lawful money of the United States, with interest thereon from the date hereof until paid at the rate of six per cent (6%) per annum, for its own use and in trust for its men as hereinafter provided, for the salvage

services rendered by the said Matson Navigation Company and said officers and crew of said tug, to be apportioned between them as hereinafter more particularly provided. [3421]

And it further appearing to this Court that the said British Ship "Celtic Chief" and her tackle, apparel, machinery, boats, furniture, appurtenances, cargo and freight money, have been released to the above-named John Henry, master and claimant in this cause (No. 117) upon a stipulation in the sum of Sixteen Thousand Dollars (\$16,000) with the United States Fidelity and Guaranty Company, a corporation, of Maryland, as Surety: It is hereby further **ORDERED, ADJUDGED AND DECREED**, that unless this decree be satisfied or proceedings thereon stayed by appeal within ten days after notice of this decree given by the libellant Matson Navigation Company, by its proctors to Messrs. Holmes, Stanley & Olson, proctors for said respondent The British Ship "Celtic Chief" and said claimant, the said surety, United States Fidelity & Guaranty Company, pay to the said libellant Matson Navigation Company, the said sum of Four Thousand Dollars (\$4,000) hereinabove awarded as aforesaid, or show cause within five days after the expiration of said period of ten days why execution should not issue against it, its lands, goods and chattels, according to said stipulation, to satisfy this decree. In the event of proceedings hereunder being stayed by appeal the obligation of said surety under said stipulation shall be suspended, to satisfy such decree as shall or may be finally made herein upon mandate on appeal. And upon payment of the said sum of Four Thousand Dollars (\$4,000), (or as may be directed by any final

decree upon mandate in case of an appeal), the said surety shall stand released from further liability on account of the said stipulation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said sum of Four Thousand (\$4,000) so awarded as salvage herein, be and the same is hereby apportioned three-fourths (or the sum [3422] of Three Thousand Dollars) to the said Matson Navigation Company as its share of said salvage award, and one-fourth (or the sum of One Thousand Dollars) to the officers and crew of the said tug "Intrepid"; the said last-mentioned sum of One Thousand Dollars (\$1,000) to be deposited in the registry of this Court pending further order and to be further apportioned and distributed between all the officers and members of the crew of said tug "Intrepid" whose names appear on the pay-roll of the said Matson Navigation Company, *pro rata* according to the amounts shown as actually earned or due them respectively in salaries or wages during the said salvage operations from and including December 6th, 1909, to and including the time of the floating of the said British Ship "Celtic Chief" at or about the hour of twelve-twenty (12:20) o'clock A. M. on December 9th, 1909; and, for the purpose of such apportionment of said sum of One Thousand Dollars (\$1,000), it is hereby further ORDERED, that said Matson Navigation Company file in this Court within sixty (60) days from the date of this decree a sworn statement showing the names of the several officers and members of the crew of said tug "Intrepid" participating in said salvage operations and the rates of salaries or wages then being paid to each, and the

amounts earned and due them respectively during the said salvage operations (including overtime); the said apportionment then to be consummated under further order of this Court.

It is hereby further ORDERED, ADJUDGED AND DECREED, that the said libellant Matson Navigation Company pay on account of costs in the said consolidated causes twenty-seventieths (20/70ths) of the taxable costs, the same to be taxed by the clerk.

Dated, Honolulu, Territory of Hawaii, June 17th, 1913.

(Sgd.) CHAS. E. CLEMONS,
Judge of the United States District Court in and for
the District and Territory of Hawaii. [3423]

[Endorsed]: No. 117. Final Decree in Favor of
Matson Navigation Company. Filed Jun. 17, 1913.
[3424]

[Title of Court and Cause—Nos. 115, 116, 117.]

Exception and Notice of Appeal—No. 116. [3425]

Now comes the claimant in the above-entitled causes in admiralty, being numbered respectively 115, 116, and 117, and excepts to the decision filed herein on the 17th day of June, 1913, and to the several decrees in favor of the libelants in said causes made and rendered this 17th day of June, 1913, and gives notice of appeal from said decision and decrees to the Circuit Court of Appeals for the Ninth Circuit.

Dated, this 17th day of June, A. D. 1913.

(Sgd.) HOLMES, STANLEY & OLSON,
Proctors for Claimant.

The above exceptions are hereby allowed.

Dated, this 17th day of June, 1913.

(Sgd.) CHAS. F. CLEMONS,
Judge, United States District Court, Territory of
Hawaii.

[Endorsed]: No. 116. Exception and Notice of
Appeal. Filed Jun. 17, 1913. [3426]

[Title of Court and Cause—Nos. 115, 116, 117.]

**Decree for Miller Salvage Company, Limited—No.
116. [3429]**

It appearing that heretofore the several causes in admiralty above severally entitled, and being causes numbers 115, 116, and 117 of causes in admiralty in this Court, were by order of this Court consolidated for trial; and said consolidated causes having come on regularly to be heard before this Court upon the pleadings and the evidence adduced by the respective parties, and the proctors for the parties having been heard thereon; and the said causes having been submitted to this Court for determination;

And the Court having duly considered the same and having on the 17th day of June, 1913, rendered and filed its decision in said consolidated causes; and the Court having determined that the services rendered to the above-named respondent *The British Ship "Celtic Chief,"* her tackle, apparel, machinery, boats, furniture, appurtenances, cargo and freight money, by the said libellant *Miller Salvage Company, Lim-*

ited, and servants thereof, were salvage services, entitled to compensation as in said decision and this decree provided;

NOW, upon motion of P. L. Weaver, Esq., proctor for said libelant Miller Salvage Company, Limited, it is ORDERED, ADJUDGED AND DECREED, that the said libelant, Miller Salvage Company, Limited, do have and recover from the said respondent The British Ship "Celtic Chief," and that said respondent The British Ship "Celtic Chief," do pay unto the said libelant Miller Salvage Company, Limited, the sum of Seven Thousand One Hundred (\$7,100.00) Dollars, in lawful money of the United States, with interest thereon, date hereof until paid at the rate of six per cent per annum [3430] for its own use and in trust for its men as hereinafter provided, for the salvage services rendered by the said Miller Salvage Company, Limited, and servants of said libelant, to be apportioned between said company and the foremen and men as hereinafter more particularly provided; and also the said libelant Miller Salvage Company, Limited, have and recover from said respondent, and that said respondent pay to said libelant Miller Salvage Company, Limited, the further sum of One Thousand Four Hundred (\$1,400.00) Dollars as and for the amount of its actual damages incurred during the said salvage operations.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said sum of Seven Thousand One Hundred (\$7,100.00) Dollars, so awarded as salvage herein, be and the same is hereby apportioned Five Thousand Six Hundred (\$5,600.00).

Dollars to the said Miller Salvage Company, Limited, as its share of said salvage award, and One Thousand Five Hundred (\$1,500.00) Dollars to the foremen and men of the said company and other servants of said owner; the latter to be deposited in the registry of this Court pending further order; the said last-mentioned sum of One Thousand Five Hundred (\$1,500.00) Dollars to be and being hereby further apportioned among the foremen and men *pro rata* according to their salaries or wages and the number of hours of their service, with the exception of Captain Miller who shall take nothing for his services; that is to say, the said sum of One Thousand Five Hundred (\$1,500.00) Dollars shall be distributed among all the foremen, bosses and men and other servants of the Miller Salvage Company, Limited, who shall appear to have been employed by said Miller Salvage [3431] Company, Limited, *pro rata* according to the amounts shown to be paid or due them respectively in salaries or wages during the said salvage operations from and including December 6, 1909, to and including the time of the floating of The British Ship "Celtic Chief" at or about the hour of twelve-twenty (12:20) o'clock A. M., on December 10, 1909, and for the purpose of such apportionment it is hereby further ordered that said Miller Salvage Company, Limited, file in this court within sixty (60) days from the date of this decree a sworn statement showing the name of the several foremen, bosses and men and other servants of the said company, participating in the said salvage operations and the rate of salaries or wages then being paid them, and the amounts earned and due them respectively during the

said salvage operations (including overtime); the said apportionment to be consummated under the further order of this Court.

And it further appearing to this Court that the said British Ship "Celtic Chief" and her tackle, apparel, machinery, boats, furniture, appurtenances, cargo and freight money, have been released to the above-named John Henry, Master and Claimant in this cause (No. 116), upon a stipulation in the sum of Thirty-six Thousand Dollars (\$36,000.00), with the United States Fidelity & Guaranty Company, a corporation of Maryland, as surety: It is hereby further ORDERED, ADJUDGED AND DECREED, that unless this decree be satisfied or proceedings thereon stayed by appeal within ten days after notice of this decree given by the libelant Miller Salvage Company, Limited, by its proctor, P. L. Weaver, Esq., to [3432] Messrs. Holmes, Stanley & Olson, proctors for said respondent The British Ship "Celtic Chief" and said claimant, that the said surety, United States Fidelity & Guaranty Company, pay to the said libelant Miller Salvage Company, Limited, the said sum of Seven Thousand One Hundred (\$7,100.00) Dollars and said further sum of One Thousand Four Hundred (\$1,400.00) Dollars, hereinabove awarded as aforesaid, or show cause within five (5) days after the expiration of said period of ten (10) days, why execution should not issue against it, its lands, goods and chattels, according to said stipulation, to satisfy this decree. In the event of proceedings hereunder being stayed by appeal, the obligation of said surety under said stipulation shall be suspended to satisfy such decree as shall or may

be made herein under mandate as required. And upon payment of the said sum of Seven Thousand One Hundred (\$7,100.00) Dollars and said sum of One Thousand Four Hundred (\$1,400.00) Dollars (or as may be directed by any final decree upon mandate in case of an appeal) the said surety shall stand released from further liability on account of the said stipulation.

It is hereby further ORDERED, ADJUDGED AND DECREED, that the said libellant Miller Salvage Company, Limited, pay on account of costs in the said consolidated causes its proportion of the costs hereafter to be taxed by the clerk, the sum of two-sevenths (2/7) of the costs.

[Endorsed]: No. 116. Notice of Filing of Final Decree in Favor of Miller Salvage Co., Ltd. Filed Jun. 20, 1913. [3433]

[Title of Court and Cause—Nos. 115, 116, 117.]

Notice of Appeal—No. 115.

To Messrs. Matson Navigation Company, a California Corporation, Libellant, in the Above-entitled Cause, and to Messrs. Smith, Warren & Hemenway, Its Proctors:

You and each of you are hereby notified that the British Ship "Celtic Chief," libellee, and John Henry, master and claimant, respondents in the above-entitled [3434] cause, intend to and hereby do appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and decree of the District Court of the United States in and for the Territory of Hawaii, made and entered in the above-entitled cause on the 17th day of June,

1913, and you are hereby further notified that said respondents intend to introduce new proofs in said appeal.

Honolulu, T. H., June 26th, 1913.

HOLMES, STANLEY & OLSON,
Proctors for the British Ship "Celtic Chief," and
John Henry, Respondents.

Received a copy this 26th day of June, 1913.

(Sgd.) SMITH, WARREN, HEMENWAY
& SUTTON,
Proctors for Matson Navigation Company, Limited.

[Endorsed]: No. 115. Notice of Appeal. Filed
Jun. 26, 1913. [3435]

[Title of Court and Cause—Nos. 115, 116, 117.]

Notice of Appeal—No. 116.

To Messrs. Miller Salvage Company, an Hawaiian
Corporation, Libellant in the Above-entitled
Cause, and to Messrs. J. A. Magoon and P. L.
Weaver, Its Proctors;

YOU and each of you are hereby notified that the
British Ship "Celtic Chief," libellee, and JOHN
HENRY, master and claimant, respondents in the
above-entitled cause, [3436] intend to and hereby
do appeal to the United States Circuit Court of Ap-
peals for the Ninth Circuit from the final order and
decree of the District Court of the United States in
and for the Territory of Hawaii, made and entered
in the above-entitled cause on the 17th day of June,
1913, and you are hereby further notified that said

respondents intend to introduce new proofs in said appeal.

Honolulu, T. H., June 26th, 1913.

HOLMES, STANLEY & OLSON,
Proctors for the British Ship "Celtic Chief," and
John Henry, Respondents.

Received a copy this 26th day of June, 1913.

(Sgd.) P. L. WEAVER,
Proctors for the Miller Salvage Company, Limited,
Libellant.

[Endorsed]: No. 116. Notice of Appeal. Filed
Jun. 26, 1913. [3437]

[Title of Court and Cause—Nos. 115, 116, 117.]

Notice of Appeal—No. 117.

To Messrs. Matson Navigation Company, a California Corporation, Libellant, in the Above-entitled Cause, and to Messrs. Smith, Warren & Hemenway, Its Proctors:

YOU and each of you are hereby notified that the British Ship "Celtic Chief," libellee, and John Henry, master and claimant, respondents in the above-entitled [3438] cause, intend to and hereby do appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and decree of the District Court of the United States in and for the Territory of Hawaii, made and entered in the above-entitled cause on the 17th day of June, 1913, and you are hereby further notified that said

respondents intend to introduce new proofs in said appeal.

Honolulu, T. H., June 26th, 1913.

HOLMES, STANLEY & OLSON,
Proctors for the British Ship "Celtic Chief," and
John Henry, Respondents.

Received a copy this 26th day of June, 1913.

(Sgd.) SMITH, WARREN, HEMENWAY
& SUTTON,
Proctors for Matson Navigation Company, Limited.

[Endorsed]: No. 117. Notice of Appeal. Filed
Jun. 26, 1913. [3439]

[Title of Court and Cause—Nos. 115, 116, 117.]

**Amendment to Final Decree in Favor of Matson
Navigation Co.—No. 117.**

Pursuant to the stipulation of the parties to the above-entitled cause #117, filed herein this date, providing for the amendment of the Final Decree heretofore entered in said cause #117, on the 17th day of June, 1913, and to conform with the decision of the Court herein in the particulars specified in said stipulation and hereinbelow set forth:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the said Final Decree in said above-entitled cause #117, dated the 17th day of June, 1913, be and the same is hereby amended as follows:

First: That the paragraph or portion of said Decree included in the last three lines on page three and including the remainder of said paragraph on

page four thereof be amended by inserting in the fourteenth line on page four of said Decree, after the words "December 9th, 1909," the following:

"There being first deducted, however, an award of \$175, in place of any *pro rata* afore-said, to Captain John W. McAllister; that is to say, that out of said sum of \$1000 there be paid \$175 to said Captain McAllister and the balance of \$825 apportioned *pro rata* among the remaining officers and members of the crew of said tug 'Intrepid' as hereinabove provided."

Second: That the words and figures "Twenty-seventieths (20/70ths)" in the last paragraph of said Decree be stricken therefrom and the words "Fifteen-seventieths (15/70ths)" be inserted in lieu thereof.

Done this 25th day of October, 1913.

(Sgd.) CHAS. F. CLEMONS,

Judge of the United States District Court, District and Territory of Hawaii, in and for the District and Territory of Hawaii.

O. K.—(Sgd.) H. S. & O. [3455]

[Endorsed]: No. 117. Amendment to Final Decree in Favor of Matson Navigation Company. Filed Oct. 20, 1913. [3456]

[Title of Court and Cause—No. 115.]

Assignment of Errors—No. 115.

Now comes the British Ship "Celtic Chief," libelee, and John Henry, master and claimant, appellants in the above-entitled cause, and say that in the

record, opinion, decision, decree and proceedings in the above-entitled matter in the above-entitled court there is manifest and material error, and said appellants now make, file and present the following assignment of errors upon which they rely, to wit:

1.

That the award of \$19,546.77 (\$17,500 for salvage and \$2,046.77 for expenses) in favor of libellant was and is not warranted by the evidence and was and is excessive and erroneous.

2.

That the Court erred in holding and deciding that the ship "Celtic Chief" was in great danger of total destruction and that libellant took any appreciable part in saving her from such danger.

3.

That the Court erred in holding and deciding that [3463] libellant's vessels and employees ran any material risk while engaged in the salvage service, or any risk at all greatly out of the ordinary.

4.

That the Court erred in holding and deciding that the services of libellant in the rescue of said ship "Celtic Chief" were substantial and indispensable, and in not holding that said services were of minor importance and by no means indispensable.

5.

That the Court erred in holding and deciding that the services of libellant assisted in any material degree in preventing said ship "Celtic Chief" from going broadside on the reef on which she was stranded, or in securing her or rendering her more

3400 *The British Ship "Celtic Chief" et al. vs.*
secure and safe in her position on said reef.

6.

That the Court erred in awarding to the libellant for its services in lightering part of the cargo of the said ship "Celtic Chief" any sum in excess of the fair value thereof on a *pro opere et labore* basis, and that the Court erred in rewarding said services as meritorious salvage services and in making a grossly excessive salvage award for mere lighterage services, and in holding that the men and small boats engaged in said lightering operations were in any material or extraordinary danger.

7.

That the Court erred in failing to find gross negligence and lack of skill on the part of the libellant and of [3464] its agents in lightering from the "Celtic Chief" before anchors had been put out to prevent her drifting farther aground and in failing to diminish libellant's award accordingly.

8.

That the Court erred in holding and deciding that the value of all the salvage services to said ship "Celtic Chief" was the sum of \$30,000, in that said value is not warranted by the evidence and was and is excessive and erroneous, and also erred in basing its award to libellant in part on said excessive value.

9.

That the Court erred in attributing to libellant's vessels and appliances and to the ship "Celtic Chief" values not warranted by the evidence.

10.

That the Court erred in holding and deciding that

the services of the German cruiser "Arcona" were entitled to an award of only \$500 out of said total salvage of \$30,000, and in not holding and deciding that said "Arcona" rendered efficient and valuable services worth far more than \$500 and in not diminishing the awards made to the other salvors in consequence thereof.

11.

That the Court erred in holding and deciding that the "Celtic Chief" would have come free without the services of the "Arcona."

12.

That the Court erred in attributing undue importance [3465] to the value of libellant's steamers engaged in the salvage operations in that said steamers were at no risk whatever during said salvage operations.

13.

That the Court erred in considering at all or to any appreciable extent the value of libellant's steamer "Mauna Kea" and the number of her officers and crew, in that said steamer accomplished nothing in the salvage of the "Celtic Chief" and abandoned said "Celtic Chief" at an early stage of the salvage operations when said "Celtic Chief" was in a far worse position than she was upon the arrival of said "Mauna Kea."

14.

That the Court erred in giving undue credit to libellant's steamer "Helene" and her anchors and appliances for the secure position occupied by the ship "Celtic Chief" on the reef on which she was stranded.

15.

That the Court erred in awarding interest to libellant from the time of the completion of its salvage services.

16.

That the Court erred in making, rendering and entering a final decree in said cause in favor of libellant and in not making, rendering and entering a final decree in favor of the claimant.

In order that the foregoing assignment of errors may be and appear of record, said appellants herein file and present the same to said Court, and pray such [3466] disposition to be made thereof as is in accordance with law and the Statutes of the United States in such case made and provided, and said appellants pray the reversal of the above-mentioned decree, and that such judgment be entered as ought to have been rendered by the District Court of the United States for the Territory of Hawaii.

Dated Honolulu, T. H., April 24th, 1914.

THE BRITISH SHIP "CELTIC
CHIEF," and JOHN HENRY, Master,
Appellants.

By (Sgd.) HOLMES, STANLEY & OLSON,
Their Attorneys and Proctors.

Due service of a copy of the within assignment of errors this day is admitted.

Dated Honolulu, T. H., April 24th, 1914.

(Sgd.) J. A. MAGOON,

(Sgd.) P. L. WEAVER,

Proctors for Libellant.

[Endorsed]: No. 115. Assignment of Errors.
Filed Apr. 25, 1914. [3467]

[Title of Court and Cause—No. 116.]

Assignment of Errors—No. 116.

Now comes the British Ship “Celtic Chief,” libellee, and John Henry, master and claimant, appellants in the above-entitled cause, and say that in the record, opinion, decision, decree and proceedings in the above-entitled matter in the above-entitled court, there is manifest and material error, and said appellants now make, file and present the following assignment of errors upon which they rely, to wit:

1.

That the award of \$8,500 (\$7,100 for salvage and \$1,400 for expenses) in favor of the libellant was and is not warranted by the evidence and was and is excessive and erroneous.

2.

That the Court erred in holding and deciding that the ship “Celtic Chief” was in great danger of total destruction and that libellant took any appreciable part in saving her from such danger.

3.

That the Court erred in holding and deciding that libellant’s vessels and employees ran any material risk [3468] while engaged in the salvage service or any risk at all, greatly out of the ordinary.

4.

That the Court erred in holding and deciding that the services of libellant in the rescue of said ship “Celtic Chief” were substantial and indispensable, and in not holding that said services were of minor importance and by no means indispensable.

5.

That the Court erred in holding and deciding that the services of libellant assisted in any material degree in preventing said ship "Celtic Chief" from going broadside on the reef on which she was stranded, or in securing her or rendering her more secure and safe in her position on said reef.

6.

That the Court erred in awarding to the libellant for its services in lightering part of the cargo of the said ship "Celtic Chief" any sum in excess of the fair value thereof on a *pro opere et labore* basis, and that the Court erred in awarding said services as meritorious salvage services and in making a grossly excessive salvage award for mere lighterage services.

7.

That the Court erred in failing to find gross negligence and lack of skill on the part of the libellant and of its superintendent, Captain Miller, in lightering from the "Celtic Chief" before anchors had been put out to prevent her drifting farther aground and in failing to diminish [3469] libellant's award accordingly.

8.

That the Court erred in holding and deciding that the value of all the salvage services to said ship "Celtic Chief" was the sum of \$30,000, in that said value is not warranted by the evidence and was and is excessive and erroneous, and also erred in basing its award to libellant in part on said excessive value.

9.

That the Court erred in attributing to libellant's

vessels and appliances and to the ship "Celtic Chief" values not warranted by the evidence.

10.

That the Court erred in holding and deciding that the services of the German cruiser "Arcona" were entitled to an award of only \$500 out of said total salvage of \$30,000, and in not holding and deciding that said "Arcona" rendered efficient and valuable services worth far more than \$500, and in not diminishing the awards made to the other salvors in consequence thereof.

11.

That the Court erred in holding and deciding that the "Celtic Chief" would have come free without the services of the "Arcona."

12.

That the Court erred in not entirely forfeiting any award to which libellant would have been otherwise entitled by reason of the misconduct of libellant and its superintendent, Captain F. C. Miller.

13.

That the Court erred in not forfeiting or greatly reducing the award made to libellant in that its superintendent, [3470] and principal stockholder, Captain F. C. Miller, did, at a time when he knew that the ship "Celtic Chief" was coming off or soon to come off the reef, deliberately and wilfully and actively conceal said fact from the officers of said "Celtic Chief" and the other salvors, and also in that said Captain Miller both hoped and intended to have said "Celtic Chief" bump the German cruiser "Arcona" when she came off the reef in order to thereby en-

hance libellant's claim to a salvage award and minimize the services of said "Arcona," and also in that said Captain Miller gave wilfully false testimony in this cause as to the value of libellant's vessels as well as to other material facts in the case.

14.

That the Court erred in insufficiently penalizing said libellant and said Captain Miller for the same reasons.

15.

That the Court erred in failing to sufficiently consider in its award the selfish and calculating spirit and unfairness toward the claimant with which libellant's salvage service was carried on.

16.

That the Court erred in awarding interest to libellant from the time of the completion of its salvage services.

17.

That the Court erred in making, rendering and entering a final decree in said cause in favor of libellant and in not making, rendering and entering a final decree in [3471] favor of the claimant.

In order that the foregoing assignment of errors may be and appear of record, said appellants herein file and present the same to said court, and pray such disposition to be made thereof as is in accordance with law and the statutes of the United States in such case made and provided, and said appellants pray the reversal of the above-mentioned decree, and that such judgment be entered as ought to have been rendered by the District Court of the United States

for the Territory of Hawaii.

Dated, Honolulu, T. H., April 24th, 1914.

THE BRITISH SHIP "CELTIC
CHIEF," and JOHN HENRY, Master,
Appellants.

By HOLMES, STANLEY & OLSON,
Their Attorneys and Proctors.

Due service of a copy of the within assignment of errors this day is admitted.

Dated Honolulu, T. H., April 24th, 1914.

(Sgd.) J. A. MAGOON,

(Sgd.) P. L. WEAVER,

Proctors for Libellant.

[Endorsed]: No. 116. Assignment of Errors.
Filed Apr. 25, 1914. [3472]

[Title of Court and Cause—No. 117.]

Assignment of Errors—No. 117.

Now comes the British Ship "Celtic Chief," libellee, and John Henry, master and claimant, appellants in the above-entitled cause, and say that in the record, opinion, decision, decree and proceedings in the above-entitled matter in the above-entitled court, there is manifest and material error, and said appellants now make, file and present the following assignment of errors upon which they rely, to wit:

1.

That the award of \$4,000 in favor of libellant was and is not warranted by the evidence and was and is excessive and erroneous.

2.

That the Court erred in holding and deciding that

the ship "Celtic Chief" was in great danger of total destruction and that libellant took any appreciable part in saving her from such danger. [3473]

3.

That the Court erred in holding and deciding that the services of libellant in the rescue of said ship "Celtic Chief" were substantial and indispensable, and in not holding that said services were of minor importance and by no means indispensable.

4.

That the Court erred in holding and deciding that the services of libellant assisted in any material degree in preventing said ship "Celtic Chief" from going broadside on the reef on which she was stranded, or in securing her or rendering her more secure and safe in her position on said reef.

5.

That the Court erred in holding and deciding that the value of all the salvage services to said ship "Celtic Chief" was the sum of \$30,000, in that said value is not warranted by the evidence and was and is excessive and erroneous, and also erred in basing its award to libellant in part on said excessive value.

6.

That the Court erred in attributing to the ship "Celtic Chief" a value not warranted by the evidence.

7.

That the Court erred in holding and deciding that the services of the German cruiser "Arcona" were entitled to an award of only \$500 out of said total salvage of \$30,000, and in not holding and deciding that said "Arcona" rendered efficient and valuable

services worth [3474] far more than \$500, and in not diminishing the awards made to the other salvors in consequence thereof.

8.

That the Court erred in holding and deciding that the "Celtic Chief" would have come free without the services of the "Arcona."

9.

That the Court erred in attributing undue importance to the value of libellant's vessel "Intrepid," in that said vessel was at no risk whatever during the salvage operations.

10.

That the Court erred in not entirely forfeiting any award to which libellant would have been otherwise entitled by reason of the misconduct of libellant's vessel "Intrepid," her master, officers and crew.

11.

That the Court erred in not forfeiting or greatly reducing the award made to libellant in that the master of libellant's vessel "Intrepid," although repeatedly asked to make way for the German cruiser "Arcona," known to him to be much larger and more powerful than said "Intrepid" and of far greater value to the "Celtic Chief," declined to so make way and give up his place to said "Arcona," and this despite the fact that his position was the best one for the "Arcona" to occupy and that he was promised another position in the salvage operations if he would do so, and also in that he together with his crew [3475] actively resisted the cutting of the line of said "Intrepid" by those on board said "Celtic Chief."

12.

That the Court erred in declining to penalize libellant or said "Intrepid" on account of the aforesaid facts.

13.

That the Court erred in not holding or deciding that the said "Intrepid" was discharged for good cause and its services were thereby terminated before the salvage of the said "Celtic Chief" and therefore libellant was not entitled to any award or compensation.

14.

That the Court erred in awarding interest to libellant from the time of the completion of its salvage services.

15.

That the Court erred in making, rendering and entering a final decree in said cause in favor of libellant and in not making, rendering and entering a final decree in favor of the claimant.

In order that the foregoing assignment of errors may be and appear of record, said appellants herein file and present the same to said court, and pray such disposition to be made thereof, as is in accordance with law and the statutes of the United States in such case made and provided, and said appellants pray the reversal of the above-mentioned decree, and that such judgment be entered as ought to have been rendered by the District [3476] Court of the United States for the Territory of Hawaii.

Dated Honolulu, T. H., April 24th, 1914.

THE BRITISH SHIP "CELTIC CHIEF,"
and JOHN HENRY, Master,

Appellants.

By HOLMES, STANLEY & OLSON,
Their Attorneys and Proctors.

Due service of a copy of the within assignment of errors this day is admitted.

Dated Honolulu, T. H., April 24th, 1914.

(Sgd.) J. A. MAGOON,

(Sgd.) P. L. WEAVER,

Proctors for Libellant.

[Endorsed]: No. 117. Assignment of Errors.
Filed Apr. 25, 1914. [3477]

[Title of Court and Cause—Nos. 115, 116, 117.]

**Order to Withdraw Exhibits from the Files—Nos.
115, 116, 117. [3490]**

It is hereby ordered that the Clerk of this Court be permitted to withdraw from the files of this court for the purpose of sending to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, the following exhibits introduced in evidence in the above-entitled cause, the said above-entitled cause having been taken on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, viz.:

Libellee's Exhibit #1 (Loncke) (Drawing), Libellee's Exhibit #2 (Loncke) (Drawing), Libellant's Exhibit "A" (Lloyd's Register), Libellant's Exhibit "A" (I. I. S. N. Co. & Mat. Nav. Co.)

(Drawing), Libellee's Exhibit #3 ("Celtic Chief") (Drawing), Libellant's Exhibit "B" (Miller Salvage Co.) (Drawing), Libellant's Exhibit "C" (I. I. S. N. & Co. & M. N. Co.) (Drawing), Libellant's Exhibit "D" (Miller Salvage) (Time-book), Libellee's Exhibit #5 (Capt. Piltz Diagram), Libellee's Exhibit #6 (J. M. Dowsett Diagram), Libellant's Exhibit "F" (Capt. Macaulay's Test), (I. I. S. N. Co.) (Drawing), Libellant's Exhibit "G" (Capt. J. R. Macaulay's Test), I. I. S. N. Co. & M. N. Co. (Drawing), Libellant's Exhibit "H" (Captain Tullett's Testimony) (Drawing), Libellant's "I" (Captain Tullett's Testimony) (Photograph), Libellant's Exhibit "J" (Captain Tullett's Testimony) (Photograph), Libellant's Exhibit "K" (Captain Tullett's Testimony) (Photograph), Libellant's Exhibit "L" (Captain Tullett's Testimony) (Photograph), Libellant's Exhibit "M" (Faneuf) (Engineer's Report), Libellant's Exhibit "N" (Capt. Haglund) (Light Signals), Libellant's Exhibit "O" (Captain Haglund) (Hemp Hawser), Libellee's Exhibit "B" (Captain Henry) (Steel Hawser), Libellant's Exhibit "P" (Captain Haglund) (Hemp Hawser), Libellee's Exhibit #8 (Capt. Haglund's Testimony) (Drawing), Libellant's Exhibit "Q" (In Deposition of Capt. Henry) (Drawing), Libellant's Exhibit "R" (Contract), Libellee's "S" (Comparison Sheet).

Dated at Honolulu this 18th day of May, 1914.

CHAS. F. CLEMONS,
U. S. District Judge. [3491]

[Title of Court and Cause—Nos. 115, 116, 117.]

**Clerk's Certificate to Apostles on Appeal—Nos.
115, 116, 117.**

I, A. E. Murphy, Clerk of the United States District Court for the District and Territory of Hawaii, do hereby certify that the foregoing pages numbered from 1 to 3,499, inclusive, contained in Volumes 1, 2, 3, 4, 5, 6, and 7, as well as Volume 8 (the latter consisting of Exhibits), is a true and complete transcript of the record and proceedings had in said court in the cases of Inter-Island Steam Navigation Company, Limited, an Hawaiian Corporation, Owner of the Steamers "Helene," "Mikahala," "Likelike," and "Mauna Kea," for Itself, the Officers and Crews of Said Steamers, and Other Servants of Said Owners, Libellant, vs. The British Ship "Celtic Chief," Her Tackle, Apparel, Machinery, Boats, Furniture, Appurtenances, Cargo and Freight Money, Libellee, and John Henry, Master, Claimant; and Miller Salvage Company, Limited, a Corporation, Libellant, vs. British Ship "Celtic Chief," Her Tackle, Apparel, Furniture, Machinery, Boats, Appurtenances, Cargo and Freight Money, Libellee, and John Henry, Master, Claimant; and Matson Navigation Company, a California [3498] Corporation, Owner of the Tug "Intrepid," for Itself, and the Officers and Crew of Said Tug, Libellant, vs. The British Ship "Celtic Chief," Her Tackle, Apparel, Machinery, Boats, Furniture, Appurtenances, Cargo and Freight Money, Libellee, and John Henry, Master, Claimant, as the same remains of record and on file in my office, and I further certify that I hereto annex the orig-

inal citation on appeal in said cause.

I further certify that the cost of the foregoing transcript of record is \$815.35, and that said amount was paid by appellant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of this court this 18th day of May, A. D. 1914.

[Seal]

A. E. MURPHY,
Clerk, United States District Court, Territory of
Hawaii. [3499]

[Endorsed]: No. 2426. United States Circuit Court of Appeals for the Ninth Circuit. The British Ship "Celtic Chief," Her Tackle, etc., and John Henry, Master and Claimant Thereof, Appellants, vs. Inter-Island Steam Navigation Company, Limited, an Hawaiian Corporation, Owner of the Steamers "Helene," "Mikahala," "Likelike," and "Mauna Kea," for Itself, the Officers and Crews of Said Steamers and Other Servants of Said Owners, Appellee, The British Ship "Celtic Chief," Her Tackle, etc., and John Henry, Master and Claimant Thereof, Appellants, vs. Miller Salvage Company, Limited, a Corporation, Appellee, and The British Ship "Celtic Chief," Her Tackle, etc., and John Henry, Master and Claimant Thereof, Appellants, vs. Matson Navigation Company, a California Corporation, Owner of the Tug "Intrepid," for Itself and the Officers and Crew of Said Tug, Appellee.

Apostles. Upon Appeal from the United States District Court for the Territory of Hawaii.

Received and filed May 27, 1914.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

[Title of Court and Cause—Nos. 115, 116, 117.]

**Supplemental Statement Under Admiralty Rule
No. 4—Nos. 115, 116, 117.**

Notice of Appeal was filed by The British Ship
“CELTIC CHIEF,” Libellee, and JOHN HENRY,
Master and Claimant, Respondents, in Cause No.
115 on the 26th day of June, 1913.

Clerk's Certificate.

United States of America,
Territory of Hawaii,—ss.

I, A. E. Murphy, Clerk of United States District Court, Territory of Hawaii, do hereby certify the foregoing to be a true and correct statement showing the date when the Notice of Appeal was filed in Cause #115 in the above-entitled causes in the United States District Court for the Territory of Hawaii.

And further that the foregoing statement and this certificate is supplemental and additional to my certificate and statement to and made a part of the Apostles on Appeal from the United States District Court for the Territory of Hawaii to the United States Circuit Court of Appeals for the Ninth Cir-

cuit, in the above-entitled causes, and made for the purpose of correcting the said Apostles on Appeal and my said certificate and statement.

IN WITNESS WHEREOF I HAVE HERE-
UNTO SET MY HAND AND AFFIX THE SEAL
OF SAID UNITED STATES DISTRICT COURT
THIS 28th DAY OF MAY, 1914.

[Seal]

A. E. MURPHY,
Clerk U. S. District Court, Territory of Hawaii.

[Title of Court and Cause—Nos. 115, 116, 117.]

Notice of Appeal—Nos. 115, 116, 117.

To Messrs. Inter-Island Steam Navigation Co., Ltd;
an Hawaiian Corporation, Libellant in the
Above-entitled Cause, and to Messrs. Smith,
Warren & Hemenway, Its Proctors:

YOU and each of you are hereby notified that the British Ship "Celtic Chief," Libellee, and JOHN HENRY, Master and Claimant, Respondents in the above-entitled cause, intend to and hereby do appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final order and decree of the District Court of the United States in and for the Territory of Hawaii, made and entered in the above-entitled cause on the 17th day of June, 1913, and you are hereby further notified that said respondents intend to introduce new proofs in said appeal.

Honolulu, T. H., June 26, 1913.

(Sgd.) HOLMES, STANLEY & OLSON,
Proctors for the British Ship "Celtic Chief," and
John Henry, Respondents.

Received a copy this 26th day of June, 1913.

(Sgd.) SMITH, WARREN, HEMEN-
WAY & SUTTON,

Proctors for Inter-Island Steam Navigation Co.,
Ltd., Libellant.

[Endorsed]: No. 115. Notice of Appeal. Filed
Jun. 26, 1913.

[Title of Court and Cause—Nos. 115, 116, 117.]

**Order for Correction of Apostles on Appeal and
Extending Time to Transmit Record on Appeal
—Nos. 115, 116, 117.**

It appearing from the representations of the Clerk of this court that in the Apostles on Appeal in the above-entitled causes in this court to the United States Circuit Court of Appeals for the Ninth Circuit, the Notice of Appeal of the above-named libellee and master and claimant from this court to the said United States Circuit Court of Appeals from the Decree of this court made and entered in the above-entitled causes in favor of the above-named Inter-Island Steam Navigation Co., Ltd., Libellant, on the 17th day of June, 1913, is incorrectly set forth, and that the time within which to prepare and transmit a true record of said Notice of Appeal in order to correct said Apostles of Appeal with respect thereto, is insufficient:

IT IS HEREBY ORDERED that the Clerk of this court do prepare a supplemental record correcting the said Apostles of Appeal with respect to said Notice of Appeal and containing a true copy and record of this order and transmit the same to the

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and that the time within which to transmit the record on appeal in said causes to said Clerk of said Circuit Court of Appeals, be, and the same is hereby extended, to and including the 15th day of June, 1914.

Dated Honolulu, T. H., May 28th, 1914.

(Sgd.) CHAS. F. CLEMONS,
Judge, United States District Court, Territory of
Hawaii.

[Endorsed]: Nos. 115-16-17. Order for Correction of Apostles on Appeal and Extending Time to Transmit Record on Appeal. Filed May 28th, 1914.

**[Certificate of Clerk U. S. District Court to Notice
of Appeal, etc.—Nos. 115, 116, 117.]**

*In the United States District Court for the Territory
of Hawaii.*

United States of America,
Territory of Hawaii,—ss.

I, A. E. Murphy, Clerk of the United States District Court, for the Territory of Hawaii, do hereby certify that the foregoing is a full, true and complete copy of the Notice of Appeal of The British Ship "Celtic Chief," Libellee, and John Henry, Master and Claimant, Respondents and Appellants, in the case of "Inter-Island Steam Navigation Co., Ltd., etc., Libellant, vs. The British Ship 'Celtic Chief,' Libellee, and John Henry, Master and Claimant," in the said United States District Court, and also an order made in said cause directing correction of Apostles on Appeal and extending time to transmit

record on appeal, as the same remain of record and on file in my office.

In witness whereof I have hereunto set my hand and affix the seal of this court, this 28th day of May, 1914.

[Seal]

A. E. MURPHY,
Clerk U. S. District Court, Territory of Hawaii.

[Endorsed]: No. 2426. Supplement to Apostles.
Filed Jun. 10, 1914. F. D. Monckton, Clerk.

